ISSUE NO. 12

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the back of each register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

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SPECIAL NOTICE AND TABLE SECTION

**BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA**

In the matter of the proposed adoption of new rules relating to potato research and market development program	))))	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On July 27, 2002, the Montana Department of Agriculture proposes to adopt new rules relating to potato research and market development program.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on July 11, 2002, to advise us of the nature of the accommodation that you need. Please contact Lee Boyer at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2402; TTY: (406) 444-4687; Fax: (406) 444-9442; or E-mail: agr@state.mt.us.

3. The proposed new rules provide as follows:

RULE I MONTANA POTATO ADVISORY COMMITTEE (1) The committee shall be a seven member committee consisting of individuals actively involved in the potato industry in either the production, research, or marketing of potatoes.

(2) A majority of the committee members must be potato "producers" per 80-11-510(3), MCA. "Producer" is defined in 80-11-503(5), MCA.

(3) On initial appointment by the director of the Montana department of agriculture, two members shall be appointed for a one-year term, two members for a two-year term, and three members for a three-year term at the director's discretion. After the initial term, all members will serve three-year terms with a maximum of three consecutive terms allowed.

**AUTH: 80-11-504, MCA
IMP: 80-11-510, MCA**

RULE II ANNUAL COMMODITY ASSESSMENT-COLLECTION

(1) Section 80-11-516, MCA charges the Montana department of agriculture with collecting the commodity assessment.

(2) The assessment shall be $.03 per hundredweight on all potatoes grown and marketed commercially in Montana by those growers producing and marketing more than 50,000 pounds annually.

(3) The assessment will be collected by the Montana department of agriculture at the time certified seed potato producers are invoiced for inspection fees for certification and by the purchaser at the first point of sale for all other potato producers.

AUTH: 80-11-504, MCA
IMP: 80-11-515, MCA

RULE III APPLICATION FOR RESEARCH AND MARKETING PROJECT FUNDS (1) Applications for project funding shall be filed with the department on or before January 1. Filing requirements will be satisfied by receipt of the original and 10 copies of each application at the Montana department of agriculture postmarked no later than January 1.

(2) The advisory committee will review all research and marketing project applications at the first regular meeting each year and make a recommendation to the department as to which projects to fund and the amount of funding.

(3) Applicants shall be notified within 30 days after the committee's meeting concerning the disposition of their application(s).

(4) The department shall periodically evaluate all outstanding project agreements for adequate and satisfactory financial control, accounting, and performance by project participants.

(5) The department may modify or terminate the funding of any project if a determination is made that the grantee has not complied or cannot comply with a provision of the project agreement. The department shall notify the grantee in writing within 30 days of such determination, of the reasons for the determination, and the effective date of the modification or termination.

AUTH: 80-11-504, MCA
IMP: 80-11-511, MCA

REASON: The Montana potato industry established a Potato Research and Market Development Program by a positive referendum vote. This program, created under 80-11-501 through 80-11-519, MCA, is funded from the proceeds at the first point of sale of the commodity. These rules are necessary to establish the method by which these commodity assessments are collected and expended as well as to define duties of the advisory committee not stated in the Montana Code Annotated. Finally, these rules are necessary to establish the procedure by which applications for funding are processed.

It is estimated that this program will impact 60 to 75 potato producers in Montana and will raise approximately $90,000 per year for research and market development.

4. Concerned persons may submit their data, views or arguments concerning this proposed adoption in writing to Lee Boyer at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-9442; or E-mail: agr@state.mt.us. Any comments must be received no later than July 25, 2002.

5. If persons who are directly affected by the proposed adoption wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Lee Boyer at the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2402 TTY: (406) 444-4687; Fax: (406) 444-9442 or E-mail: agr@state.mt.us. A written request for hearing must be received no later than July 25, 2002.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 8 persons based on 60 to 75 potato producers.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding noxious weed seed forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, warehouseman, produce, mint, seed, alternative crops, wheat research and marketing, rural development and/or hail. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-9442 or E-mail: agr@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Agriculture. All department rule making notices and adoptions may be reviewed at the Department of Agriculture's website at www.agr.state.mt.us.

8. The bill sponsor notice requirements of 2-4-302, MCA apply and have been fulfilled.

DEPARTMENT OF AGRICULTURE

/s/ Ralph Peck	/s/ Tim Meloy
Ralph Peck	Tim Meloy, Attorney
Director	Rules Reviewer

Certified to the Secretary of State June 17, 2002.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE OF THE STATE OF MONTANA

In the matter of the proposed adoption of new rules I through IV pertaining to insurance information and privacy protection	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 15, 2002, at 9:00 a.m., a public hearing will be held in the 2nd floor conference room, State Auditor's Office, 840 Helena Avenue, Helena, Montana, to consider the proposed adoption of New Rules I through IV, pertaining to insurance information and privacy protection.

2. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the office no later than 5:00 p.m., August 9, 2002, to advise us as to the nature of the accommodation needed. Please contact Pamela Weitz, State Auditor's Office, 840 Helena Ave., Helena, MT 59601; telephone (406) 444-1744; Montana Relay 1-800-332-6145; TDD (406) 444-3246; facsimile (406) 444-3497 or e-mail to pweitz@state.mt.us.

3. The proposed new rules provide as follows:

RULE I PURPOSE (1) The purpose of [RULES I through IV] is to provide rules that interpret statutes and define terms within the Insurance Information and Privacy Protection Act, Title 33, chapter 19, MCA. The goals of these rules are to ensure that the purpose and scope of the Privacy Protection Act, as described in 33-19-102 and 33-19-103, MCA, are fully implemented.

AUTH: Sec. 33-1-313 and 33-19-106, MCA
IMP: Sec. 33-19-102 and 33-19-103, MCA

RULE II NOTICE EXCEPTIONS FOR CERTIFICATE HOLDERS (1) "Personally identifiable information" sufficient to trigger a notice to certificate holders as described in 33-19-202(2)(a), MCA does not include names, addresses, birth dates and identification numbers, used in any combination as personal identifiers obtained for the sole purpose of verifying eligibility for insurance coverage, provided that the insurance institution does not use that information for any purpose other than verifying benefits, does not collect further information, or disclose any personal information about that individual outside the provisions of 33-19-306(7),

MCA, and does not use this information for any marketing purpose.

(2) A notice to individual certificate holders is required if further information is collected, or personal information is used for purposes other than for eligibility determination, or disclosed for any other purpose, including disclosures to affiliates.

AUTH: Sec. 33-19-106, MCA
IMP: Sec. 33-19-202, MCA

RULE III SAMPLE NOTICE FORM (1) For the purpose of providing notice to applicants pursuant to 33-19-202(4)(a), MCA, insurance producers may use the sample notice form referred to as Appendix A, which is hereby incorporated into this subchapter. Producers must fill in the blanks with the appropriate specific information regarding disclosures and collection of information concerning each individual applicant. If a particular provision in the sample notice is not applicable because the insurance producer or insurance institution does not collect or disclose information in that way, the provision may be deleted from the notice.

(2) If a notice based on the sample form is used at the time of application, the insurance institution must still provide the individual with that company's complete privacy notice at the time the policy or certificate is issued.

(3) A licensee is not subject to the notice requirements set forth in 33-19-202, MCA if the licensee is an employee, agent or other representative of another licensee ("principal") and:

(a) the principal otherwise complies with, and provides the notices required by the provisions of this rule and 33-19-202, MCA, including notice to applicants; and

(b) the licensee does not collect or disclose personal information except as provided for in the principal's privacy notice and except as required by his employment or contractual relationship with the principal.

(4) A licensee may not collect or disclose personal information beyond what is required by the licensee's relationship with the principal unless the licensee provides another privacy notice to the individual that is specific to the licensee.

AUTH: Sec. 33-19-106, MCA
IMP: Sec. 33-19-202, MCA

RULE IV DEIDENTIFICATION FOR GROUP POLICYHOLDER AUDITS (1) For purposes of 33-19-306(14), MCA medical record information provided to a group policyholder is deemed to be "edited to prevent the identification of the applicant, policyholder, or certificate holder" if the following identifiers of the individual are removed:

(a) name;

(b) address;

(c) all elements of dates (except year) for dates directly related to the individual, including birth date, discharge date, and date of death;
(d) telephone numbers;
(e) fax numbers;
(f) electronic mail addresses;
(g) social security number;
(h) medical record numbers;
(i) health plan beneficiary numbers;
(j) account numbers;
(k) certificate/license numbers;
(l) vehicle identifiers and serial numbers, including license plate numbers;
(m) device identifiers and serial numbers;
(n) web universal resource locators (URLs);
(o) internet protocol (IP) address numbers;
(p) biometric identifiers, including finger and voice prints; and
(q) full face photographic images and any comparable images.

(2) Disclosure by the licensee of personal information that the group policyholder already has in its possession is not a disclosure under 33-19-306(14), MCA unless the personal information is associated with or otherwise attached to medical record information or personal financial information.

(3) The fact of death does not require deidentification if that information is publicly available, unless it is associated with or otherwise attached to other medical record information or personal financial information.

AUTH: Sec. 33-19-306(22), MCA
IMP: Sec. 33-19-306(14), MCA

APPENDIX A: SAMPLE PRIVACY NOTICE

As an applicant for insurance, your personal information is protected by the Montana Insurance Information and Privacy Protection Act, Title 33, chapter 19, Montana Code Annotated (2001). While processing your insurance application, it may be necessary for your insurance producer or an insurance institution to collect or disclose certain information about you. Those collections and disclosures are briefly described hereinafter. WHEN THE INSURANCE INSTITUTION ISSUES AN INSURANCE POLICY OR CERTIFICATE TO YOU, IT WILL PROVIDE YOU WITH A COMPLETE NOTICE OF ITS PRIVACY PRACTICES.

In addition to the information that you (applicant) have already provided, it is necessary to collect the following types of information about you from other sources in order to process your application for insurance:
_____.

That information will be collected from the following sources: _____ _____.

Montana law allows insurers and insurance producers to disclose certain information about you in the course of conducting the business of insurance and also for some marketing activities. As a result of this application for insurance, the following disclosures of information will be made about you to the following individuals or organizations [describe disclosures the licensee makes pursuant to disclosure exceptions listed in 33-19-306 and 33-19-307, MCA]: _____.

OR

No disclosures of personal information, even those allowed by law, will be made about you as a result of this application for insurance.

[If any disclosures are made pursuant to the Fair Credit Reporting Act as a result of this application, describe those here]: _____.

Your insurance producer will protect the confidential information that he/she receives from you and from other sources in the following manner [describe security measures taken to protect the confidentiality of consumers' personal information; EXAMPLE: Your information is destroyed and not retained by this agency unless you actually purchase a policy from us]: _____.

You have the right to access and correct all personal information collected about you. Contact your insurance producer if you want more information about this right or if you wish to exercise these rights. [Refer to 33-19-301 and 33-19-302, MCA].

While processing your application, it may be necessary to obtain reports from the following insurance support organizations [for example, Comprehensive Loss Underwriting Exchange and Medical Information Bureau]:_____. The information obtained from a report prepared by an insurance support organization may be retained by the insurance support organization and disclosed to other persons.

[If the application process requires the licensee to collect medical record information and if subsequent disclosures of that medical record information are made for any reason, the following provision must be included in the privacy notice.] You are entitled to receive, upon written request to the licensee, a record of any subsequent

disclosures of medical record information made by the insurance institution or the producer.

4. REASONABLE NECESSITY STATEMENT: The reason for adopting New Rules I through IV is that certain statutes within the Insurance Information Privacy Protection Act, Title 33, chapter 19, MCA, require clarification and certain terms require further definition in order "to carry out the provisions of this chapter." [33-19-106, MCA] In addition, 33-19-306(22), MCA required the Commissioner "to adopt rules establishing the methods that must be used by licensees to prevent identification as described in 33-19-306(14)."

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Christina L. Goe, Attorney, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or be e-mailed to cgoe@state.mt.us, and must be received no later than August 26, 2002.

6. Christina L. Goe, Attorney, has been designated to preside over and conduct the hearing.

7. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, 840 Helena Avenue, Helena, MT 59601, faxed to (406) 444-3497, e-mailed to cgoe@state.mt.us, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

JOHN MORRISON, State Auditor
and Commissioner of Securities

By: /s/ Angela Caruso
Angela Caruso
Deputy Insurance Commissioner

By: /s/ Elizabeth L. Griffing
Elizabeth L. Griffing
Rules Reviewer

Certified to the Secretary of State on June 17, 2002.

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 17.8.505, 17.8.510 and 17.8.514 pertaining to air quality operation fees, annual review of air quality permit fees, and open burning fees	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On July 30, 2002 at 10:30 a.m., the Board of Environmental Review will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., July 17, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386 or email ber@state.mt.us.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.505 AIR QUALITY OPERATION FEES (1) through (3) remain the same.

(4) ~~(a)~~ Annually, the department shall provide the owner or operator of each air contaminant source, required to pay an air quality operation fee, with written notice of the amount of the fee and the basis for the fee assessment.

~~(b)~~ (a) The air quality operation fee is due 30 days after receipt of the notice, unless the fee assessment is appealed pursuant to ARM 17.8.511. If any portion of the fee is not appealed, that portion of the fee that is not appealed is due 30 days after receipt of the notice. Any remaining fee, which may be due after completion of an appeal, is due immediately upon issuance of the board's decision or upon completion of any judicial review of the board's decision.

~~(c)~~ (b) If an owner or operator assessed an air quality operation fee fails to pay the required fee (or any required portion of an appealed fee) within 60 days after the billing date, the department may impose a late payment charge of 10% of the fee (or any required portion of an appealed fee), plus interest on the fee (or any required portion of an appealed fee) computed at the interest rate established under 75-2-220(5)(a)(i), MCA.

(5) The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during

the previous calendar year and is an administrative fee of $400, plus ~~$16.93~~ $17.89 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted.

(6) through (9) remain the same.

AUTH: 75-2-111, 75-2-220, MCA
IMP: 75-2-211, 75-2-220, MCA

17.8.510 ANNUAL REVIEW (1) No later than September 30 of each year, the department shall report to the board regarding the air quality permit fees which are anticipated for the next calendar year. This report shall include a description of the legislative appropriation to be recovered, the status of the specific appropriation account as of the end of the previous fiscal year, the emissions upon which such fees will be based, the ~~tier system~~ fee structure to be implemented, and the status of any anticipated rulemaking activity necessary to adopt the new fees.

AUTH: 75-2-111, MCA
IMP: 75-2-211, MCA

REASON: Pursuant to §75-2-220, MCA, the Department assesses air quality permit application fees, annual air quality operation fees, and major open burning permit fees. In the aggregate, these fees must be sufficient to cover the Department's costs of developing and administering the permitting requirements of the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the Board.

Air quality operation fees are required for all facilities that hold an air quality permit, or that will be required to obtain an air quality permit pursuant to the Title V air quality operating permit program. The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per ton fee for tons of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted. The amount of money the Department needs to generate through air quality operation fees depends on the legislative appropriation and the amount of carryover from the previous year. The emission component of the operation fee is also revised to account for changes in the total amount of pollutants emitted in the state in the previous calendar year. This rulemaking would set the air quality operation fees for 2002.

The legislative appropriation for 2001 was $2,287,674. The amount of the carryover was $180,739. The total amount of pollutants reported for last year's fees was 117,477 tons, and the per ton component of the air quality operation fee was $16.93.

The appropriation for 2002 is $2,390,602, an increase of $102,928 from last year. The total amount of pollutants reported for this year's fees is 112,416 tons. Based upon the appropriation, the carryover and the emission inventory, to cover the department's costs of developing and administering the air quality permitting program, it is necessary for the board to increase the per ton charge to $17.89. Therefore, the board is proposing to amend ARM 17.8.505(5) by replacing the per ton charge of $16.93 with $17.89.

Last year, the total amount of fees assessed was $2,025,188. The amount of fees that would be assessed to meet this year's appropriation would be $2,205,926, for an increase of $180,738. This year's fees would be assessed for 487 facilities.

The Board is proposing to revise the numbering of ARM 17.8.505 to delete the "double earmark" in the numbering of the current 17.8.505(4)(a). This is necessary to conform the numbering of the rule to the current rule numbering style of the Secretary of State's Office.

The Board also is proposing to amend ARM 17.8.510 to eliminate the reference to the former tiered system of assessing different fees for various regulated pollutants. In 1998, the Board replaced a tiered system of air quality permit application fees and air quality operation fees, under ARM 17.8.504 and 17.8.505, respectively, with the current system of a uniform fee for each ton of air pollutant emitted, regardless of the type of pollutant. The Board is proposing to amend ARM 17.8.510 by substituting the phrase "fee structure" for the current reference to "tier system," to reflect the change from the tier system.

17.8.514 AIR QUALITY OPEN BURNING FEES (1) through (3) remain the same.

(4) The major open burning air quality permit application fee shall be based on the actual, or estimated actual, amount of air pollutants emitted by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality open burning permit for major open burning sources, as required under ARM 17.8.610 (Major Open Burning Source Restrictions).

(a) The fee shall be the greater of the following, as adjusted by any amount determined pursuant to (4)(b), below:

(i) a fee calculated using the following formula:

tons of total particulate emitted in the previous appropriate calendar year, multiplied by ~~$15.84~~ $13.32; plus tons of oxides of nitrogen emitted in the previous appropriate calendar year, multiplied by ~~$3.96~~ $3.33; plus tons of volatile organic compounds emitted in the previous appropriate calendar year, multiplied by ~~$3.96~~ $3.33; or

(ii) and (b) remain the same.

AUTH: 75-2-111, MCA
IMP: 75-2-211, 75-2-220, MCA

REASON: **The Board is proposing to amend ARM 17.8.514 by revising the fee required for major open burning permit applications for fiscal year 2003. Each year, in consultation with the Montana Airshed Group, which includes the major open burners in the state, the Department develops a budget reflecting the cost the Department will incur that year in operating its Smoke Management Program for major open burners. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions during the previous calendar year in which the burner conducted open burning pursuant to an air quality major open burning permit. For calendar year 2001, the major open burners reported 7691.4 tons of emissions, compared to 6562.1 tons for calendar year 2000, or an increase of 1129.3 tons.**

The budget for operating the program for 12 major open burners in fiscal year 2003 is $44,723.00, compared to a budget of $43,886.00 for fiscal year 2002. The $837.00 budget increase is due to expected increases of $1,547.60 for personnel services, $2,986.32 for contracted meteorological services, and $155.00 for miscellaneous expenses, and due to expected decreases of $2,000.00 for supplies and materials, $135.00 for travel, and $1,716.89 for indirect costs. Due to the increase in the emission inventory and the expected decrease in expenses for the program, it is necessary to decrease the per ton charge to avoid assessing fees in excess of the program budget. The Board is proposing to decrease the permit fees from $15.84 per ton of particulate, $3.96 per ton of oxides of nitrogen, and $3.96 per ton of volatile organic compounds emitted to $13.32, $3.33, and $3.33, respectively.

The $837.00 budget increase for this year would result in a total cumulative increase in fees of the same amount. This amount would be paid by the 12 major open burners.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at ber@state.mt.us and must be received no later than 5:00 p.m., August 6, 2002. To be guaranteed consideration, the comments must be postmarked on or before that date.

5. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies

that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA, underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at ber@state.mt.us or may be made by completing a request form at any rules hearing held by the Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF ENVIRONMENTAL REVIEW

By: *JOSEPH W. RUSSELL*
JOSEPH W. RUSSELL, M.P.H.
Chairman

Reviewed by:

DAVID M. RUSOFF
DAVID M. RUSOFF, Rule Reviewer

Certified to the Secretary of State, June 17, 2002.

**BEFORE THE BOARD OF CRIME CONTROL
OF THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 23.14.401 regarding membership on the Peace Officers Standards and Training Council and ARM 23.14.404 regarding POST training hours awarded for college credits	)))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On July 29, 2002 the Board of Crime Control proposes to amend ARM 23.14.401 regarding membership on the Peace Officers Standards and Training Council and ARM 23.14.404 regarding certification requirements for peace officers.

2. The Board of Crime Control will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on July 5, 2002, to advise us of the nature of the accommodation that you need. Please contact Ali Sheppard, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; FAX (406) 444-3549; or e-mail asheppard@state.mt.us.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

23.14.401 ADMINISTRATION OF PEACE OFFICERS STANDARDS AND TRAINING (1) and (2) remain the same.

(3) There is hereby created in the board of crime control the peace officers standards and training advisory council to consist of no more than ~~17~~ 18 members appointed by the governor which shall advise the board of crime control concerning the administration and purposes of this ~~regulation~~ rule. Members of this council shall include, but not be limited to, the following:

(a) through (n) remain the same.

(o) One member to be recommended by the director of the department of corrections; ~~and~~

(p) One member to be a juvenile detention officer or administrator of a juvenile detention center~~.~~; and

(q) one member to be recommended by the director of the department of livestock.

(4) through (21) remain the same.

AUTH: 44-4-301, MCA

IMP: 7-32-303, 44-4-301, MCA

Pursuant to 81-1-201, MCA, the department of livestock may appoint stock inspectors and detectives and must designate which such individuals are considered law enforcement officers. Those individuals designated by the department of livestock as law enforcement officers have similar powers and authority as deputy sheriffs. Because the department of livestock employs and supervises law enforcement officers it has been determined that membership on the peace officers standards and training council would be beneficial.

23.14.404 GENERAL REQUIREMENTS FOR CERTIFICATION

(1) through (4) remain the same.

~~(5) Point System.~~

~~(a)~~ (5) ~~Education Points~~ Secondary educational hours are as follows:

~~(i)~~ (a) one college semester unit shall equal ~~4 points~~ 6 secondary educational hours.

~~(ii)~~ (b) one college quarter unit shall equal ~~3 points~~ 4 secondary educational hours.

~~(iii)~~ (c) when more than 15 ~~education points~~ secondary educational hours are claimed and no degree has been earned, the total number of secondary educational ~~points~~ hours claimed as POST training points toward any level of POST certification shall not exceed two-thirds of the total number of such training points that are required.

~~(iv) education points~~ (d) secondary educational hours claimed must have been earned on credits awarded in a course from a college or university that is accredited by its state department of education, its state university system, the recognized nationalized accrediting body, or that is approved by the POST advisory council. Such credits must have been earned in a course of study leading to a degree as described in the college catalog where the credits were earned.

~~(b)~~ (6) Training points are as follows:

(i) through (iii) remain the same, but are renumbered (a) through (c).

~~(6) Law enforcement experience:~~

(a) Remains the same, but is renumbered (7).

(b) and (c) remain the same, but are renumbered (a) and (b).

AUTH: 44-4-301, MCA
IMP: 44-4-301, 44-11-301 through 44-11-305, MCA

This amendment is necessary to reflect the decision of the peace officers standards and training council to re-name education points, secondary educational hours and to increase the credit granted for one college semester from 4 education points to 6 educational hours and the credit granted for one college quarter from 3 education points to 4 secondary educational hours. The peace officers standards and training council recommended these changes because the old system used

for conversion of points was confusing and no longer matched the system used by universities.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendments in writing to Ali Sheppard, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401, Fax (406) 444-3549, by surface mail, or electronically to asheppard@state.mt.us to be received no later than July 25, 2002.

5. If persons who are directly affected by the proposed amendments wish to submit their data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request, along with any written comments to Ali Sheppard, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401. The comments must be received no later than July 27, 2002.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 180 based upon the 1800 students who attend the Montana Law Enforcement Academy.

7. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding Montana peace officers standards and training. Such written request may be mailed or delivered to the Office of the Attorney General, Attn: Interested Party List, P.O. Box 201401, Helena, MT 59620, faxed to the office at (406) 444-3549, e-mailed to asheppard@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department.

8. The bill sponsor notice requirements of 2-4-302, MCA do not apply.

By: /s/ Jim Oppedahl
JIM OPPEDAHL, Director
Board of Crime Control

/s/ Ali Sheppard
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State June 17, 2002.

**BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA**

In the matter of the proposed amendment of ARM 24.21.411 and the proposed adoption of new rules relating to apprenticeship	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On July 22, 2002, at 10:00 a.m. a public hearing will be held in the first floor conference room of the Walt Sullivan Building, 1327 Lockey Street, Helena, Montana, to consider the proposed amendment of an existing rule and the proposed adoption of new rules all relating to apprenticeship.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., July 15, 2002, to advise us of the nature of the accommodation that you need. Please contact the apprenticeship and training program, Attn: Mr. Mark Maki, 1327 Lockey, Walt Sullivan Building, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-3556; TDD (406) 444-0532; fax (406) 444-3037 or e-mail mmaki@state.mt.us.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.21.411 MINIMUM GUIDELINES FOR REGISTRATION OF PROGRAMS

(1) Remains the same.

(a) through (r) Remain the same.

(s) Provision addressing the sponsor's responsibility to the apprentice and the public regarding safety, training quality and ensuring acceptable practices performed by the apprentice.

AUTH: 39-6-101, MCA
IMP: 39-6-106, MCA

REASON: The Department believes that the inclusion of (1)(s) is reasonably necessary to inform the public of program requirements. The addition to the rule is in the best interest of the apprenticeship program and specifically identifies the sponsor's obligations to provide a safe, quality, training experience for the apprentice. The Department is specifically charged with the responsibility of registering apprenticeship agreements that are in the best interests of apprenticeship and the inclusion of (1)(s) furthers that goal by specifying that the sponsor must provide adequate training for the protection of the apprentice and the public.

4. The proposed new rules provide as follows:

NEW RULE I COMPLAINT PROCESS--APPEAL (1) A dispute or complaint involving an apprenticeship agreement subject to the jurisdiction of the apprenticeship and training program (registration agency) may be filed with the Apprenticeship and Training Program, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624-1728, telephone (406) 444-3998, or fax to (406) 444-3037.

(2) Upon receipt of a complaint, or discovery of a possible violation of an apprenticeship agreement or standard, the registration agency shall:

(a) screen the complaint or possible violation for proper jurisdiction;

(b) attempt to resolve the dispute informally at the earliest opportunity and if a complaint cannot be resolved, the registration agency, program sponsor, the complainant or a representative of the complainant must formally file a signed written complaint with the registration agency within 30 business days of the alleged violation;

(c) provide notice within 10 business days of receipt of a complaint or possible violation to the program participant against whom a complaint or possible violation is directed;

(d) solicit a response to the complaint or possible violation from the program participant against whom the complaint or possible violation is directed;

(e) complete the investigation within 30 business days after the signed written complaint is filed, unless all parties to the complaint request a reasonable extension of the time for completion of the investigation; and

(f) within 15 business days of the completion of the investigation, issue to all parties to a complaint a written determination regarding the merits of the complaint or violation and include an appropriate remedy.

(3) Program participants are considered to be in "good standing" and in compliance with their registered apprenticeship standards during an investigation process unless a participant is determined or proven to be:

(a) non-compliant with state or federal laws, rules or regulations governing the employment of an apprentice in work performed pursuant to a Montana apprenticeship agreement; or

(b) non-cooperative in providing the program with requested information directly related to an investigation of a complaint.

(4) A party dissatisfied with a determination issued pursuant to (2) may request a re-determination from the registration agency within 20 business days of the mailing of the determination.

(5) A party dissatisfied with a re-determination may request a contested case hearing by filing an appeal within 20 calendar days following the mailing of the redetermination. A contested case hearing must be conducted in accordance with the procedures set forth in 2-4-601, MCA.

(6) A party dissatisfied with the final agency decision issued following a contested case hearing may seek judicial review within 30 calendar days after service of the final agency

decision as set forth in 2-4-701, MCA, et seq.
AUTH: 39-6-101, MCA
IMP: 39-6-101 and 39-6-102, MCA

REASON: The Department believes that there is reasonable necessity to adopt NEW RULE I to provide a dispute resolution procedure involving apprenticeship disputes. The Department is experiencing significant growth in the apprenticeship program and with increased usage comes an increased number of disputes. The Department is specifically authorized in 39-6-102(2), MCA, to "bring about the settlement of differences arising out of the apprenticeship agreement...." The Department does not have an established dispute resolution procedure. The Department assembled a workgroup of interested persons to assist in development of a dispute resolution procedure. That procedure is encompassed in NEW RULE I. The Department believes that the dispute procedure ensures fair treatment of all parties to a dispute and is in the best interest of apprenticeship in Montana. Parties to a dispute will now have a written procedure to assist them in resolving disputes.

NEW RULE II SUPERVISION REQUIRED (1) A qualified journeyworker or master must supervise the work of an apprentice in the proper ratio prescribed in the registered standard. Supervision means the following:

(a) A journeyworker or master must be assigned to the job site and be able to give direction and check the work of the apprentice except during absences as required in the scope of business and otherwise provided in this chapter.

(2) Except as otherwise provided in this chapter, an apprentice may not work without the supervision of a journeyworker or master while engaging in an activity covered by the apprenticeship agreement or registered apprenticeship standards of the sponsor.

(3) Sponsors employing apprentices in occupations that require a residential focus may work an apprentice in areas of experience with limited supervision based on prior performance and a demonstration of competency.

(4) An apprentice who has completed no less than 70% of the apprentice's required term and is completely current with related instruction may work with limited supervision. The apprentice's work must be physically examined on a daily basis by a journeyworker or master for correctness.

(5) During the last 20% of the apprenticeship term, an apprentice who is completely current with required related instruction may work without supervision, provided that the apprentice's work will be physically examined weekly by a journeyworker or master, and provided that the apprentice's prior performance demonstrates sufficient competence to perform the work.

AUTH: 39-6-101, MCA
IMP: 39-6-101 and 39-6-106, MCA

REASON: The Department believes NEW RULE II to be reasonably

necessary due to the Department's statutory obligation to establish apprenticeship standards and due to increased inquiries from the apprenticeship community regarding appropriate levels of supervision. Program standards require supervision of apprentices, yet the level of supervision is not defined. As a result, the Department assembled a workgroup of interested persons from the apprenticeship community to assist the Department in arriving at a reasonable standard for the required level of supervision of apprentices. NEW RULE II is the product of the workgroup and the Department believes the rule to be appropriate for adoption as a written standard for members of the apprenticeship community to adhere to.

NEW RULE III RATIO WAIVER PROCESS (1) The registration agency may consider waiver of ratio standards only if the registered apprenticeship sponsor is in full compliance with registered standards and there are no outstanding complaints directly related to the specific registered apprenticeship program. The registration agency may waive ratio standards for a registered apprenticeship sponsor who demonstrates the need for a waiver by documented proof of all of the following:

(a) the registered apprenticeship sponsor's existing apprentices are current with the required related instruction, including apprentices that have been granted credit;

(b) the registered apprenticeship sponsor's existing apprentices have a documented 80% or higher accumulated grade average in related instruction;

(c) the registered apprenticeship sponsor must be registered for a minimum of two years to be eligible to apply for a ratio waiver;

(d) the registered apprenticeship sponsor must notify and document attempts to seek qualified journeyworkers from internal trade associations, area employers in like occupations and posting a statewide-confidential job order through the nearest local job service office; and

(e) the registered apprenticeship sponsor must have an established completion rate that is no less than 80% based on the total number of all past and current apprentices. That number does not include:

(i) apprentices who have rolled over to other programs registered with the sponsor; and

(ii) cancellations by apprentices either through non-compliance or cancellations that have occurred during the probation period stated in the registered apprenticeship sponsor's registered standards.

AUTH: 39-6-101, MCA
IMP: 39-6-101 and 39-6-106, MCA

REASON: The Department believes NEW RULE III is reasonably necessary to provide adequate notice to the apprenticeship community of the standard to be utilized by the Department in considering and granting waivers from the established ratio of apprentices to journeyworkers. The Department is required by 39-6-106, MCA, to specify in an apprenticeship agreement the

ratio of apprentices to journeyworkers. During periods of labor shortage, journeyworkers may not be readily available to satisfy the demand for workers in a particular apprenticeable occupation. As a result, the Department has granted waivers from the strict ratio established in the apprenticeship agreement to help program sponsors meet labor shortage situations. At the same time, it is the Department's role to ensure a quality training experience for the apprentice. The Department assembled a workgroup of persons from the apprenticeship community to assist it in creating a program standard for granting ratio waivers. NEW RULE III reflects the workgroup's efforts. The Department believes NEW RULE III to provide a workable standard for granting ratio waivers and believes it is appropriate to commit that standard to rule so that the apprenticeship community is aware of the standard utilized.

NEW RULE IV APPRENTICE TO JOURNEYWORKER RATIO (1) An apprentice that meets the following criteria is not counted when computing the apprentice to journeyworker ratio:

(a) an apprentice that has completed 80% or more of the on-the-job training hours and related instruction in an apprenticeship program lasting more than 8,000 hours; or

(b) an apprentice that has completed 75% or more of the on-the-job training and related instruction for apprenticeship programs lasting less than 8,000 hours.

(2) The apprentice to journeyworker ratio applies to individual work sites as well as the entire firm or operation of the registered apprenticeship sponsor.

AUTH: 39-6-101, MCA
IMP: 39-6-102 and 39-6-106, MCA

REASON: The Department believes NEW RULE IV to be reasonably necessary to establish when an apprentice is counted for purposes of meeting the required ratio of apprentices to journeyworkers. In each legislative session since 1997, the legislature has struggled with bills to establish an appropriate ratio. On each occasion, the introduced bills have failed. After the failure of the most recent bill to lessen the ratio standard, the Department undertook the task of assembling a workgroup of interested persons from the apprenticeship community to try to resolve the ongoing struggle of establishing an appropriate ratio. One of the compromises reached by the workgroup is reflected in NEW RULE IV which removes an apprentice from counting toward the ratio once that apprentice has completed a significant portion of the apprentice's training. The Department believes it is reasonably necessary to adopt NEW RULE IV to commit to rule the ratio standard that the Department is statutorily required to establish.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

Mark Maki
Apprenticeship and Training Program
Workforce Services Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., July 29, 2002. Comments may also be submitted electronically as noted in the following paragraph.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://dli.state.mt.us/calendar.htm, under the Calendar of Events, Administrative Rules Hearings section. Interested persons may make comments on the proposed rules via the comment forum, http://forums.dli.state.mt.us, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., July 29, 2002. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

7. The Department maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and any specific topic or topics over which the Department has rule-making authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department.

8. The bill sponsor notice provisions of 2-4-302, MCA, do not apply.

9. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

/s/ KEVIN BRAUN	**/s/ WENDY J. KEATING**
Kevin Braun,	**Wendy J. Keating, Commissioner**
Rule Reviewer	**DEPARTMENT OF LABOR & INDUSTRY**

Certified to the Secretary of State: June 17, 2002.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION OF THE STATE OF MONTANA

In the matter of amendment of ARM 36.24.101 purpose, 36.24.102 definitions and construction of rules, 36.24.103 direct loans, 36.24.104 types of bonds; financial and other requirements, 36.24.105 other types of bonds, 36.24.106 covenants regarding facilities financed by the loan, 36.24.107 fees, 36.24.108 evaluation of financial matters and commitment agreement, 36.24.109 requirements for disbursing of loan, 36.24.110 terms of loan and bond; adoption of new rule I relating to financial and other requirements for loans to private persons	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On July 17, 2002, the Department of Natural Resources and Conservation will hold a public hearing at 1:00 p.m. at the Department of Natural Resources and Conservation, Bannock Conference Room, 1625 11th Avenue at Helena, Montana, to consider the proposed amendment of existing rules and the proposed adoption of a new rule all related to implementation of the Water Pollution Control State Revolving Fund Act.

2. The Department of Natural Resources and Conservation will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. on July 12, 2002, to advise us of the nature of the accommodation that you need. Please contact Anna Miller, Financial Development Bureau Chief, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-2074; FAX (406) 444-2684.

3. The rules as proposed to be amended provide as follows: (stricken matter interlined, new matter underlined)

<u>36.24.101 PURPOSE</u> (1) The purpose of this <u>sub-</u>chapter is to implement provisions of the ~~Wastewater Treatment~~ <u>Water Pollution Control State</u> Revolving Fund Act pursuant to Title 75, chapter 5, part 11<u>, MCA</u>; and sections 601 through 607 of

Federal Water Pollution Control Act, 33 U.S.C. 1381 through 1387, as amended.

(2) The act creates a financing mechanism for wastewater treatment projects and certain ~~non-point~~ nonpoint source ~~control pollution~~ projects through use of loans and other financial incentives.

(3) ~~The board of environmental review has adopted rules to assure that the state's wastewater treatment program complies with the Clean Water Act. ARM 16.18.301 et seq.~~

~~(4)~~ The act authorizes the use of the state revolving fund to provide several types of financial assistance to municipalities and private ~~concerns~~ persons. These rules implement ~~one of the authorized forms of~~ financial assistance~~,~~ in the form of a ~~direct~~ loan to municipalities and private persons.

AUTH: 75-5-1105, MCA
IMP: 75-5-1103, MCA

REASON: There is reasonable necessity for amendment of this rule in order to provide editorial changes.

36.24.102 DEFINITIONS AND CONSTRUCTION OF RULES In this sub-chapter, the following terms have the meanings indicated below and, in certain cases, are supplemental to the definitions contained in Title 75, chapter 5, part 11, MCA, sections 601 through 607 of the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387, as amended, and ARM 17.40.302. Terms used but not defined herein have the meanings ~~proscribed~~ prescribed in ARM 17.40.302 or the indenture of trust. Any conflict between this ~~subchapter~~ sub-chapter and the indenture of trust shall be resolved in favor of the indenture of trust.

(1) "Act" means ~~Wastewater Treatment~~ Water Pollution Control State Revolving Fund Act, Title 75, chapter 5, part 11, MCA.

(2) "Administrative expenses surcharge" means a surcharge on each loan charged by the department to the ~~municipality~~ borrower expressed as a percentage per annum on the outstanding principal amount of the loan, payable by the ~~municipality~~ borrower on the same dates that payments of principal and interest on the loan are due, calculated in accordance with these rules.

(3) through (6) remain the same.

~~(7)~~(9) "Borrower resolution" means a resolution of a ~~municipality~~ borrower authorizing the issuance of bonds or a loan agreement.

~~(8)~~(7) "Borrower" means municipality or private person to whom a loan is made.

~~(9)~~(8) "Borrower obligation" means a bond or loan agreement.

(10) through (12) remain the same.

(13) "Debt" means debt incurred to acquire, construct, extend, improve, add to, or otherwise pay expenses related to

the system, without regard to the source of payment and security for such debt (i.e., without regard to whether it is, for example, general obligation revenue or special assessment debt).

(14) and (15) remain the same.

(16) "Eligible water pollution control project" means projects that meet the requirements of the federal act and approved by the department of environmental quality, including, without limitation, certain wastewater collection and treatment system projects, sewage system projects, storm sewer or storm drainage projects, ~~wastewater treatment system projects~~ and solid waste management projects ~~that have been approved as part of the state's non-point~~ and other nonpoint source ~~management plan~~ projects.

(17) through (21) remain the same.

(22) "Gross revenues" means with respect to revenue bonds, all revenues derived from their operation of a sewage, wastewater, storm sewer or storm drainage system, or ~~solid waste management system~~ from a nonpoint source project, including but not limited to rates, fees, charges, and rentals imposed for connections with and for the availability, benefit, and use of the water, sewage, wastewater, storm sewer or storm drainage system, or ~~solid waste management system~~ nonpoint source project as now constituted and of all replacements and improvements thereof and additions thereto, and from penalties and interest thereon, and from any sales of property acquired for the system or for or in connection with the nonpoint source project and all income received from the investment of all moneys on deposit in system accounts.

(23) and (24) remain the same.

(25) "Loan" means the loan of money from the department to a municipality or private person from the state revolving fund in accordance with the provision of the act and these rules.

(26) "Loan agreement" means an agreement entered into between a borrower that is a private person and the department evidencing the loan.

(26) will remain the same but will be renumbered (27).

~~(27)~~(28) "Municipality" means municipality as defined in 75-5-1102~~(5)~~(6), MCA, ~~and a county, a county water and sewer district, or a solid waste district~~.

~~(28)~~ (29) "Net revenues" means the entire amount of gross revenues of the system or project less the actual operation and maintenance cost plus additional annual costs of operation and maintenance estimated to be incurred, including sums to be deposited in an operating reserve.

~~(29)~~ (30) "~~Non-point~~ Nonpoint source" means the source of pollutants which originates from diffuse runoff, seepage, drainage or infiltration.

(31) "Nonpoint source management plan" means the department of environmental quality's approved management plan relating to nonpoint source projects.

~~(30)~~(32) "~~Non-Point~~ Nonpoint source project" means a project that has been approved in the ~~state's non-point~~ source

management plan and that is eligible and has qualified for financing under the program pursuant to the deferral act, the act, these rules, and applicable department of environmental quality rules.

(31) and (32) remain the same but will be renumbered to (33) and (34).

~~(33)~~(35) "Priority list" means the list of projects expected to receive financial assistance under the program, ranked in accordance with a priority system developed under Section ~~213~~ 1296 of the ~~Act~~ federal act.

(36) "Private person" shall have the meaning ascribed to such term in 75-5-1002(7), MCA.

~~(34)~~(37) "Program" means the Montana ~~wastewater treatment~~ water pollution control revolving fund program.

~~(35)~~(38) "Project" ~~means the facilities, improvements, and activities financed, refinanced, or the cost of which is being reimbursed to the borrower with the proceeds of the loan~~ shall have the meaning ascribed to such term in 75-5-1102(9), MCA.

(36) remains the same but will be renumbered (39).

~~(37)~~ (40) "Reserve requirement" means the amount required to be maintained in a reserve fund securing the payment of the bond as set forth in the commitment agreement, which amount shall be equal to the ~~lesser~~ maximum annual debt service on the bond in the then current or any future fiscal year during the term of the bond (or if other bonds payable from the revenues of the system are then outstanding, the maximum aggregate annual debt service on all outstanding bonds and the additional bond proposed to be issued in the then current or any future fiscal year during the term of the outstanding bonds and the additional bond proposed to be issued).

~~(a) 10% of the principal amount of the bond, or~~

~~(b) maximum annual debt service on the bond in the then current or any future fiscal year.~~

~~(38)~~ (41) "Revenue" means revenues (gross or net received by the ~~municipality~~ borrower from or in connection with the operation of the system or project.

(39) and (40) remain the same but will be renumbered (42) and (43).

~~(41)~~ (44) "Solid waste management system" means any system that qualifies as a nonpoint source project which controls the storage, treatment, recycling, recovery, or disposal of solid waste, and for purposes of this chapter, improvements to such system that qualify as a ~~non-point~~ nonpoint source project, ~~including~~ and that may include the acquisition of land, installation of liners, monitoring of wells, construction and closure of landfills~~, transfer stations, container sites, incinerating facility~~, or composting facilities, and all necessary and related equipment.

(42) and (43) remain the same but will be renumbered (45) and (46).

~~(44)~~ (47) "State bonds" means the state's general obligation ~~wastewater treatment~~ water pollution control revolving fund program bonds.

~~(45)~~ (48) "State revolving fund" means the ~~wastewater treatment works~~ water pollution control state revolving fund established under 75-5-1106, MCA.

(46) and (47) remain the same but will be renumbered (49) and (50).

~~(48)~~ (51) "System" means the sewage, wastewater, storm drainage or storm sewer system, or solid waste management system of a municipality or a private person and all ~~extension~~ extensions, improvements, and betterments thereof.

(52) "Treatment works" means treatment works as defined under Section 1292 of the federal act.

(49) and (50) remain the same but will be renumbered (53) and (54).

AUTH: 75-5-1103, MCA
IMP: 75-5-1102, MCA

REASON: There is reasonable necessity for amendment of this rule in order to reflect needed editorial changes. The EPA and the State have redefined some terms differently from when the program was originally introduced. Also information was added to assist private borrowers and borrowers using loan proceeds for nonpoint source projects.

36.24.103 DIRECT LOANS (1) The department may make a direct loan to a ~~municipality~~ borrower for the purpose of financing or refinancing eligible projects costs of an eligible water pollution control project.

(a) The loan to a municipality must be evidenced by a bond issued by the governing body of the municipality pursuant to a bond resolution.

(b) The loan to a private person must be evidenced by a loan agreement approved and authorized for execution and delivery by the board of directors or such other governing body of the private person that is authorized by law to bind the private person.

(2) The bond resolution must be in a form acceptable to the department and contain provisions and covenants appropriate to the type of bond being issued, consistent with the provisions of these rules, the commitment agreement and any financial or other requirements imposed by the department pursuant to these rules.

(a) The department has adopted a form of bond resolution for municipalities that is available for review by prospective borrowers. Subject to the following, the ~~The~~ bond issued by a municipality shall be issued in full compliance with all pertinent statutory provisions of Montana law and these rules, and applicable provisions of the code so that the interest thereon is exempt from federal income taxation.

(b) The requirements for a resolution relating to a loan to or for the benefit of a private person involved in a nonpoint source project will vary on a case by case basis. A bond issued for the benefit of a private person shall, to the extent reasonably practicable, be issued so that the interest

thereon is exempt from federal income tax.

~~(2)~~ (3) Anytime after receipt of notice that the proposed project has been placed on the priority list ~~or the state's non-point source management plan, as the case may be and intended use plan~~ and the engineering report for the proposed project, including compliance with the Montana Environmental Protection Act has been approved, a municipality may file an application for financing from the ~~SRF~~ state revolving fund. The ~~municipality~~ borrower shall indicate on the application the type of bond it proposes to issue to secure the requested loan. The ~~municipality~~ borrower shall submit with its application the financial information necessary to enable the department to determine compliance with the provisions of these rules and sufficient information to determine whether the project proposed to be financed is an eligible water pollution control project.

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

REASON: There is reasonable necessity for amendment of this rule in order to reflect needed editorial changes. The EPA and the State have redefined some terms differently from when the program was originally introduced. Also information was added to assist private borrowers and borrowers using loan proceeds for nonpoint source projects.

36.24.104 TYPES OF BONDS; FINANCIAL AND OTHER REQUIREMENTS (1) The following types of bonds will be accepted by the department as evidence of and security for a loan to a municipality under the program if Montana law authorizes the municipality to issue such bonds to finance the project and the department determines the municipality has the ability to repay the loan. Notwithstanding compliance with the provisions of state law, the department may determine that it will not approve the loan if it determines that the loan is not likely to be repaid in accordance with its terms or it may impose additional requirements that in its judgment it considers necessary.

(a) through (b)(ii) remain the same.

(iii) the municipality shall covenant to collect and maintain rates, charges, and rentals such that the revenue for each fiscal year the bonds are outstanding will be at least sufficient to pay the current expenses of operation and maintenance of the system, to maintain the operating reserve, and to produce net revenues during each fiscal year not less than 125% of the maximum amount of principal and interest due on all outstanding bonds payable from the revenues of the system in any future fiscal year or, if the municipality calculates debt service on such outstanding bonds on a calendar year basis, then in any future calendar year;

(iv) the municipality shall agree not to incur any additional debt payable from the revenues of the system, unless the net revenues of the system for the last complete fiscal year preceding the issuance of such additional bonds

have equaled at least 125% of the maximum amount of principal and interest payable from the revenue bond account in any subsequent fiscal year during the term of the then outstanding bonds and the additional bonds proposed to be issued, or, if the municipality calculates debt service on such outstanding bonds on a calendar year basis, then in any future calendar year.

(A) For the purpose of the foregoing computation, the net revenues must be those shown by the financial reports caused to be prepared by the municipality, except that if the rates and charges for service provided by the system have been changed since the beginning of the preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional bonds must be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted, to determine the net revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance which the engineer for the municipality estimates will be incurred because of the improvement or extension of the system to be constructed from the proceeds of the additional bonds proposed to be issued.

(B) In no event may any such additional bonds be issued and made payable from the revenue bond account if there then exists any deficiency in the balances required to be maintained in any of the accounts of the fund or if the municipality is in default in any of the other provisions;

(v) remains the same.

(A) if requested by the department, audited financial statements of the system for the last two completed fiscal years;

(B) if requested by the department, a certificate as to the municipality's current population and number of system users, a schedule of the 10 largest users of the system showing the percentage of total revenues provided by such ~~user~~ users and the amount of outstanding system debt;

(C) through (vii) remain the same.

(viii) in addition to the foregoing terms and conditions, in the case of loans to finance ~~solid waste management system~~ nonpoint source projects, particularly where there is no existing system or history of revenues, the department may impose such requirements as the department determines are reasonable and prudent to determine or realize adequate security for the loan; for example, in connection with a solid waste management system project, the department may require ~~among other things~~, without limitation:

(A) a financial feasibility study;

(B) a description of other solid waste management services available in the area; ~~and~~

(C) that the municipality ~~to~~ place the fees and charges on the tax bill and collect them in accordance with the provisions of Title 7, chapter 13, part 2, MCA~~,~~ ; and

(D) require that the debt be secured by the full faith and credit of the municipality.

(c) through (iv) remain the same.

(v) the district shall covenant to collect and maintain rates, charges, and rentals such that the revenue for each fiscal year the bonds are outstanding will be at least sufficient to pay the current expenses of operation and maintenance of the system, to maintain the operating reserve and to produce net revenues during each fiscal year not less than ~~125~~ 120% of the maximum amount of principal and interest due on all outstanding bonds payable from the revenues of the system in any future fiscal year, or, if the municipality calculates debt service on such outstanding bonds on a calendar year basis, then in any future calendar year;

(vi) remains the same.

(vii) the district shall agree not to incur any additional debt payable from the revenues of the system without the written consent of the department, unless the net revenues of the system for the last complete fiscal year preceding the issuance of such additional bonds have equaled at least ~~110~~ 120% of the maximum amount of principal and interest payable from the revenue bond account in any subsequent fiscal year during the term of the then outstanding bonds and the additional bonds proposed to be issued, or, if the municipality calculates debt service on such outstanding bonds on a calendar year basis, then in any future calendar year.

(A) For the purpose of the foregoing computation, the net revenues must be those shown by the financial reports caused to be prepared by the district, except that if the rates and charges for services provided by the system have been changed since the beginning of the preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional bonds must be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted, to determine the net revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance which the engineer for the district estimates will be incurred because of the improvement or extension of the system to be constructed from the proceeds of the additional bonds proposed to be issued.

(B) In no event shall any such additional bonds be issued and made payable from the revenue bond account if there then exists any deficiency in the balances required to be maintained in any of the accounts of the fund or if the district is in default in any of the other provisions;

(viii) remains the same.

(A) if requested by the department, audited financial statements of the system for the last two completed fiscal years if there is an existing system;

(B) through (d)(iii) remain the same.

(iv) the special improvement district be at least 75% developed, except if the loan is for the purpose of acquiring an existing system. For purposes of this section, a district will be deemed to be 75% developed if 75% of the lots or

assessable area in the district ~~has~~ have a habitable residential dwelling thereon that is currently occupied or there is a commercial, professional, manufacturing, industrial, or other non-residential facility thereon;

(v) and (vi) remain the same.

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

REASON: There is reasonable necessity for amendment of this rule in order to reflect needed editorial changes. The State is also asking for additional information from borrowers requesting private loans, nonpoint source loans, or other program loans.

36.24.105 OTHER TYPES OF BONDS (1) If a municipality wishes to secure a loan by a type of bond not specifically authorized in these rules, the department may accept the bond if the bond is duly authorized and issued in accordance with Montana law as evidenced by an opinion of bond counsel to that effect and the department determines that the terms and conditions of the bond, including the security ~~therefore~~ therefor, are adequate. The department may impose upon the municipality wishing to issue such bonds such terms, conditions, and covenants consistent with the provisions of the law authorizing the issuance of such bonds that it deems necessary to make the bonds creditworthy and thus protect the viability of the program.

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

REASON: There is reasonable necessity for amendment of this rule in order to reflect needed editorial changes. The State is also asking for additional information from borrowers requesting private loans, nonpoint source loans, or other program loans.

36.24.106 COVENANTS REGARDING FACILITIES FINANCED BY THE LOAN (1) Specific requirements and covenants with respect to the system or improvements to the system being financed from the proceeds of the loan must be contained in the bond resolution of the municipality, forms of which are available from the department, and may include the requirements and covenants set forth herein. The forms of bond resolution of the municipality should be consulted for more specific detail as to each of these covenants. Given that a loan agreement cannot be reduced to a general form, no such general form exists, and would need to be developed for each proposed loan to or for the benefit of each private person and the particular nonpoint source project.

(2) The borrower must:

(a) acquire all property rights necessary for the project including rights-of-way and interest in land needed

for the construction, operation, and maintenance of the facility;

(b) ~~to~~ furnish title insurance, a title opinion, or other documents showing the ownership of the land, mortgage, encumbrances, or other lien defects; and

(c) ~~to~~ obtain and record the releases, consents, or subordinations to the property rights ~~for~~ from holders of outstanding liens or other instruments as necessary for the construction, operation, and maintenance of the project.

(3) The borrower ~~at all times~~ shall acquire and maintain at all times with respect to the system, property and casualty insurance and liability insurance with financially sound and reputable insurers, or self-insurance as authorized by state law, against such risks and in such amounts, and with such deductible provisions, as are customary in the state in the case of entities of the same size and type as the borrower and similarly situated and shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid timely the premiums for all such insurance.

(a) All such insurance policies shall name the department as an additional insured, unless the department expressly agrees otherwise.

(b) Each policy must provide that it cannot be canceled by the insurer without giving the borrower and the department 30 days' prior written notice.

(c) The borrower shall give the department prompt notice of each insurance policy it obtains or maintains to comply with this rule and of each renewal, replacement, change in coverage or deductible under or amount of or cancellation of each such insurance policy and the amount and coverage and deductibles and carrier of each new or replacement policy.

(d) The notice shall specifically note any adverse change as being an adverse change.

(4) remains the same.

(5) The ~~borrower~~ municipality agrees that it will comply with the provisions of the Montana Single Audit Act, Title 2, chapter 7, part 5, MCA~~, and~~. The municipality also agrees to provide, to the extent not required by the ~~s~~Single ~~a~~Audit ~~a~~Act, and the private person agrees to ~~also~~ provide, for each fiscal year to the department ~~and the department of environmental quality~~, promptly when available:

(a) through (7) remain the same.

(8) The borrower shall also have prepared and supplied to the department ~~and the department of environmental quality~~, within 120 days of the close of every other fiscal year, an audit report prepared by an independent certified public accountant or an agency of the state in accordance with generally accepted governmental accounting principles and practice with respect to the financial statements and records of the system. The audit report shall include an analysis of the borrower's compliance with the provisions of the resolution.

(9) The borrower shall maintain project accounts in accordance with generally accepted government accounting

standards, and as separate accounts, as required by ~~section 602(b)(9)~~ Section 1382 of the ~~Clean Water Act~~ federal act.

(10) After reasonable notice from the EPA, the borrower shall make available to the EPA such records as the EPA reasonably requires to review and determine compliance with Title VI of the Clean Water Act, as provided in ~~section 606(e)~~ Section 1386 of the ~~Clean Water Act~~ federal act.

(11) The borrower shall agree to comply with all conditions and requirements of the ~~Clean Water Act~~ federal act pertaining to the loan and the project.

(12) The borrower shall agree not to sell, transfer, lease, or otherwise encumber the system, any portion of the system, or interest in the system without the prior written consent of the department while the bond resolution or loan agreement is in effect.

(13) remains the same.

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

REASON: There is reasonable necessity for amendment of this rule in order to reflect needed editorial changes. The EPA and the State have redefined some terms differently from when the program was originally introduced. Also information was added to assist private borrowers and borrowers using loan proceeds for nonpoint source projects.

36.24.107 FEES (1) through (1)(a) remain the same.

(b) An administrative fee up to 1% of the amount of the ~~committed~~ maximum authorized principal amount of the loan as reflected in the bond resolution or loan agreement must be charged each borrower. The department shall retain the administrative fee from the proceeds of the loan at the time of closing and transfer the fee to the state revolving fund administration account as provided in the indenture of trust. The department and department of environmental quality may determine and establish from time to time, the precise amount of the administrative fee to be charged, based on the projected costs of administering the program and other revenues available to pay such costs.

(c) remains the same.

(d) Each ~~borrowers~~ borrower's origination fee shall be paid at closing by the retention by the ~~DNRC~~ department of such amount from the proceeds of the loans or from proceeds of the borrower.

(e) All borrowers unless excepted from the requirement by the department shall pay a loan loss reserve surcharge equal to 1% per annum on the outstanding principal amount of the loan, payable on the same dates that payments of principal and interest on the loan are due. The loan loss reserve surcharge must be deposited in the loan loss reserve account established in the indenture of trust until the loan loss reserve requirement as defined in the ~~general~~ bond resolution or loan agreement is satisfied. ~~at which~~ At this point it can

be deposited in the state allocation account or to such other fund or account in the state treasury authorized by state law as a department of environmental quality or department representative shall designate, or segregated in a separate sub-account in the loan loss reserve account and applied to any costs of activities under the program authorized by state law as a department of environmental quality or department representative shall designate. The department and department of environmental quality may determine and establish from time to time, the precise amount of the loan loss reserve surcharge to be charged, based on the loan loss reserve requirement and the amounts in the match account. The borrower shall repay ~~the following items:~~ the loan at an interest rate determined in accordance with ARM ~~36.24.110~~ 36.24.111, plus the loan loss reserve surcharge plus the administrative expense surcharge. The borrower shall propose rates and charges for all wastewater services necessary to repay the above items. The department and the department of environmental quality shall rank all applications. Based on a consideration of social economic factors and measures of financial condition ~~the department,~~ and ~~department~~ in accordance with the provisions of ~~environmental quality~~ the intended use plan, the department may agree not to impose the loan loss reserve surcharge on the borrower. Any excess fees on revenues generated within or by the program shall be used exclusively for purposes authorized by the federal act.

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

REASON: There is reasonable necessity for amendment of this rule in order to reflect editorial changes.

36.24.108 EVALUATION OF FINANCIAL MATTERS AND COMMITMENT AGREEMENT (1) and (2) remain the same.

(3) Upon approval of the application, if the borrower is a private person, the department may require the private person, upon approval by the governing body of the person or entity, to enter into a commitment agreement (in the form provided by the department) with the department, pursuant to which the private person agrees to adopt the loan agreement and issue the bond or promissory note described therein, and to pay its origination fee in the event the private person elects not to issue its bond or proceed with the loan agreement.

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

REASON: There is reasonable necessity for amendment of this rule in order to provide information for private borrowers using the program.

36.24.109 REQUIREMENTS FOR DISBURSING OF LOAN (1) Loans

will be disbursed by warrants drawn by the ~~state auditor~~ department of administration or wire transfers authorized by the state treasurer or the department in accordance with the provisions of this rule, and the indenture of trust. No disbursement of any loan shall be made unless the department has received from the ~~municipality~~ borrower, the following:

(a) a duly adopted and executed bond resolution from a municipality or loan agreement from a private person in a form acceptable to the department;

(b) a duly executed bond or note in a principal amount equal to the amount of the loan in a form acceptable to the department;

(c) a certificate of an official of the ~~municipality~~ borrower that there is no litigation threatened or pending challenging the ~~municipality's~~ borrower's authority to undertake the project, to incur the loan, issue the bonds or enter into the loan agreement, collect the system charges in a form acceptable to the department or pledge its revenues or assets to the repayment of the loan or bonds;

(d) an opinion of bond counsel acceptable to the department that the bond is a valid and binding obligation of the municipality payable in accordance with its terms and that the interest in a form acceptable to the department thereon is exempt from state and federal income taxation in a form acceptable to the department, and, with respect to a loan to a private person, such legal opinions as the department deems necessary or appropriate, including that the note and loan agreement are the valid and bonding obligations of the private person payable in accordance with their terms and that the making of the loan will now cause any bonds issued as tax-exempt bonds by the state to finance the program to become taxable;

(e) through (l) remain the same.

(m) a copy of the ~~municipality's~~ borrower's request for such disbursement on the form prescribed by the department; and

(n) remains the same

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

REASON: There is reasonable necessity for amendment of this rule in order to reflect needed editorial changes. The State is also asking for additional information from borrowers requesting private loans, nonpoint source loans, or other program loans.

36.24.110 TERMS OF LOAN AND BONDS (1)~~(a)~~ The source of funding of the loans under this program initially will be 83.33% from the EPA and 16.67% from the proceeds of the state's bonds, as adjusted as permitted from time to time by the federal act, the act, and applicable program documents.

(a) The interest rate on the loan will be determined by the department at the time the loan is made. The rate on a

loan must be such that the interest payments ~~there on~~ thereon and on other loans funded from the proceeds of the state's bonds will be sufficient, if paid timely and in full, with other available funds in the revolving fund including investment income, from which the loan was funded to pay the principal of and interest on the state's bonds issued by the state.

(b) remains the same.

(2) Unless the department otherwise agrees, each loan shall be payable, including principal and interest thereon and the administrative expense surcharge and loan loss reserve surcharge, if any, over a term approved by the department, not to exceed 20 years after the completion date of the project, or such longer period as may then be permissible under the federal act or the act. In no case shall the term of a loan exceed the useful life of the project being financed.

(a) Interest, administrative expense surcharge and loan loss reserve surcharge, if any, payments on each disbursement of each loan or portion thereof which is not a construction loan shall begin no later than 15 days prior to the next interest payment date (unless the loan is closed within 15 days of the next interest payment date, in which case the first payment date shall be no later than ~~45~~ 15 days prior to the next following interest payment date).

(b) For construction loans, the department may permit principal amortization to be delayed until as late as one year after completion of the project, provided that ~~the payment of~~ interest on each disbursement of a construction loan shall begin no later than 45 days prior to the next interest payment date (unless the loan is closed within ~~15~~ 45 days of the next interest payment date, in which case the first payment date shall be no later than ~~15~~ 45 days prior to the next following interest payment date) unless the state has provided for the payment of interest on its bonds by capitalizing interest.

(c) In any event, the payment of interest must commence no later than the payment of principal.

(3) remains the same.

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

REASON: There is reasonable necessity for amendment of this rule in order to reflect needed editorial changes and reflect changes to comply with requirements of the Federal Act.

4. The proposed new rule provides as follows:

NEW RULE I FINANCIAL AND OTHER REQUIREMENTS FOR LOANS TO PRIVATE PERSONS (1) It is anticipated that the private persons or entities eligible for financing under the program may differ substantially in organizational structure, capitalization, creditworthiness, type and availability of security or collateral for the loan, and the numbers of users of the system. The department has determined it is not feasible to establish

by rule specific underwriting criteria applicable to each type of loan to a private party. In general, for a loan to a private person or entity, the department shall determine, based on representation of the borrower and other information available to it, that adequate revenues exist, or are reasonably expected to be produced, to pay the principal of and interest on the loan when due, and that the borrower will provide, or cause to be provided, to the department security or other collateral providing reasonable assurance of payment in the event of a default.

(2) The department is authorized to request and review any financial information of the borrower or third parties who may provide collateral or additional security that the department may deem necessary and appropriate to make the determination required under (1).

(3) The department may require such security or collateral for a loan to a private person or entity as it may determine necessary and appropriate in the circumstances, taking into account, among other things, the nature of the borrower, the principal amount of the loan and the project being financed, including, but not limited to:

(a) a mortgage or trust indenture on the facilities being financed;

(b) a mortgage or trust indenture on other property of the borrower or a third party;

(c) an assignment of revenues or accounts receivable;

(d) personal, corporate or other guarantees;

(e) letters or lines of credit;

(f) certificates of deposit; and

(g) assignments or pledges of stock or other securities.

(4) The department may as a condition of the loan impose financial covenants on the borrower, including, for example, a limit on the ability of the borrower to incur additional indebtedness, and any covenants necessary to obtain, if feasible, or maintain the tax exempt status of the state bonds sold to finance the loan.

(5) The department shall, after consultation with the department of environmental quality, establish loan application procedures and forms of applications for loans to private persons. An application by a private person for a loan is to include:

(a) a reasonably detailed description of the project;

(b) a reasonably detailed estimate of the cost of the project;

(c) a timetable for the construction of the project and for payment of the cost of the project, including a construction budget;

(d) identification of the source of funds to be used in addition to the proceeds of the loan to pay the cost of the project;

(e) the source of sources of revenue proposed to be used to repay the loan;

(f) a current financial statement of the system or project showing assets, liabilities, revenues, and expenses, and three-

year operating budget;

(g) a statement as to whether, at the time of application, there are any outstanding loans, notes, bonds or other obligations payable from the system or secured by the project and, if so, a description of the loans, notes, bonds or other obligations;

(h) a statement as to whether, at the time of the application, there are any outstanding loans, notes, or other obligations of the private person and, if so, a description of the loans, notes, or other obligations;

(i) any other information that the department or the department of environmental quality may require to determine the feasibility of a project and the applicant's ability to repay the loan, including but not limited to:

(i) engineering reports;

(ii) economic feasibility studies;

(iii) title reports;

(iv) maps, property records, evidence of water or other rights; and

(v) legal opinions.

AUTH: 75-5-1105, MCA
IMP: 75-5-1112, MCA

REASON: There is reasonable necessity to adopt New Rule I in order to reflect the requirements of the state in order to process and evaluate a private loan application.

5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Anna Miller, Financial Development Bureau Chief, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-2074; FAX (406) 444-2684 or e-mailed to annam@state.mt.us and must be received no later than 5:00 p.m. on July 25, 2002.

6. Anna Miller, Financial Development Bureau Chief, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601 has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Proposed Amendment is available through the department's site on the World Wide Web at http://www.dnrc.state.mt.us. The department strives to make the electronic copy of this Notice of Proposed Amendment conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

8. The agency maintains a list of interested persons who

wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to Emily Cooper, Department of Natural Resources and Conservation, P.O. Box 201601, 1625 11th Avenue, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor notice requirements of 2-4-302, MCA do not apply.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: /s/ Arthur R. Clinch
ARTHUR R. CLINCH
Director

By: /s/ Donald D. MacIntyre
DONALD D. MACINTYRE
Rule Reviewer

Certified to the Secretary of State June 17, 2002.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the adoption of new Rule I and the amendment of ARM 37.86.2801, 37.86.2901, 37.86.2905, 37.86.2910, 37.86.3001, 37.86.3005, 38.86.3007, 37.86.3016 and 37.86.3018 pertaining to inpatient and outpatient hospitals	)	NOTICE OF EXTENSION OF COMMENT PERIOD

TO: All Interested Persons

1. On April 25, 2002, the Department published notice at page 1289 of the 2002 Montana Administrative Register, issue number 8 of the proposed adoption and amendment of the above-stated rules. On May 30, 2002, the Department published notice of an extension of time to comment at page 1543 of the 2002 Montana Administrative Register, issue number 10 of the proposed adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on July 3, 2002, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The Department is further extending the comment period to July 10, 2002. The Department is extending the comment period at the request of hospital providers so that they can simulate the effect of the proposed changes in the weights, thresholds and the elimination of catastrophic reimbursement policy. The final version of the DRG table of weights and thresholds is dated June 13, 2002. A copy of the DRG table of weights and thresholds is available at (www.dphhs.state.mt.us/legal/proposal_notices.htm) on the Department's Internet website or by writing the Department of Public Health and Human Services, Health Policy and Services Division, P.O. Box 202951, Helena, MT 59620-2951.

The purpose of extending the comment period is to allow hospitals sufficient time to submit detailed comments pertaining to the proposed changes. In order to allow time for comments the Department is delaying the proposed implementation date until August 1, 2002. In response to a comment, the proposed amendments to ARM 37.86.3016 and ARM 37.86.3018 will be clarified as to the application of Resource Based Relative Value

System (RVRBS) methodology to compute reimbursement rates for imaging services and other diagnostic services without an APC rate, but for which a medicaid fee has been assigned.

3. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.3016 OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, IMAGING SERVICES (1) Imaging services will be reimbursed as follows:

(a) and (b) remain as proposed.

(c) For imaging services where no APC rate has been assigned, but a medicaid fee has been assigned, the fee ~~is the amount~~ will be set in accordance with the RBRVS methodology as set in ARM 37.85.212~~(9)~~.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

37.86.3018 OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, OTHER DIAGNOSTIC SERVICES (1) Other diagnostic services will be reimbursed as follows:

(a) and (b) remain as proposed.

(c) For other diagnostic services without an APC rate, but for which a medicaid fee has been assigned, the fee ~~is the amount~~ will be set in accordance with the RBRVS methodology as set in ARM 37.85.212~~(9)~~.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

4. Written data, views or arguments may be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on July 10, 2002. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State June 17, 2002.

**BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA**

In the matter of the proposed amendment of ARM 42.13.101, 42.13.103, 42.13.105, 42.13.106, 42.13.107, 42.13.108, 42.13.109, 42.13.201, 42.13.221, 42.13.222, 42.13.301, 42.13.304, 42.13.305, 42.13.401, 42.13.402, and 42.13.601 relating to liquor licensing	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On July 22, 2002, at 1:00 p.m., a public hearing will be held in the Director's conference room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.13.101, 42.13.103, 42.13.105, 42.13.106, 42.13.107, 42.13.108, 42.13.109, 42.13.201, 42.13.221, 42.13.222, 42.13.301, 42.13.304, 42.13.305, 42.13.401, 42.13.402, and 42.13.601 relating to liquor licensing.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., July 8, 2002, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) All licensees, their agents, and employees must conduct the licensed premises in compliance with the rules of other state and local agencies and abide by all:

(a) provisions of the laws of Montana and the United States related to alcoholic beverages;

(b) county and city or town ordinances related to alcoholic beverages;

(c) Indian liquor laws applicable within the areas of Indian country, as defined by 18 U.S.C. 1151, provided a tribe having jurisdiction over such area of Indian country adopted an ordinance, certified by the secretary of the interior, and published in the ~~f~~Federal ~~r~~Register; and

(d) rules of the department relating to alcoholic

beverages. ~~In addition, all licensees must conduct the licensed premises in compliance with the rules of other state and local agencies.~~

(2) Proof of violation by a licensee or ~~his~~ the licensee's agent or employee of any of the provisions of the above laws, ordinances, or rules is sufficient grounds for revocation or suspension of the license, and licensees may be reprimanded or assessed a civil penalty in accordance with 16-4-406, MCA.

(3) The department will impose progressive penalties for multiple violations of any laws, ordinances and rules within any ~~3~~ three-year period unless mitigating circumstances indicate the penalty should be reduced, or aggravating circumstances indicate the penalty should be increased. Violations and progressive penalties include, but are not limited to, those listed on the following chart. Any combination of four of the ~~below~~ violations listed below occurring within a ~~3~~ three-year period could result in a license revocation action.

Violation	1st Offense	2nd Offense	3rd Offense	4th Offense
Sale to a Minor	$250	$1000	$1500/20-day Suspension	Revocation
Sale to Intoxicated Persons	$250	$1000	$1500/20-day Suspension	Revocation
Open after Hours	$150	$600	$1000/12-day Suspension	Revocation
Sale after Hours	$150	$600	$1000/12-day Suspension	Revocation
Re-pouring	$250	$1000	$1500/20-day Suspension	Revocation
Denial of Right to Inspect	$150	$600	$1000/12-day Suspension	Revocation
No Approval to Alter	~~$150~~ 300	$600	$1000/12-day Suspension	Revocation
No Management Agreement	$150	$600	$1000/12-day Suspension	Revocation
Improper Use of Catering Endorsement	$150	$600	$1000/12-day Suspension	Revocation
Accept More than 7 Days Credit	$250	$1000	$1500/20-day Suspension	Revocation

Extend More than 7 Days Credit	$250	$1000	$1500/20-day Suspension	Revocation
Undisclosed Ownership Interest	Fine, Suspension or Revocation			
90-Day Nonuse Without Approval	lapse			

(4) Reinstatement of a revoked license pursuant to this rule will not be considered until the number of violations in a ~~3~~ three-year period from the effective date ~~that~~ of revocation ~~was effective~~ totals ~~to~~ three years or less, but in no event less than one year. In every case, reinstatement will only be allowed if:

(a) the licensee demonstrates to the department that the licensee has taken steps to insure the causes of the license revocation will be prevented from occurring; and

(b) a license is available under the quota.

(5) and (6) remain the same.

(7) Mitigating circumstances in the case of sale to a minor could result in a reprimand for the first offense within the most current ~~3~~ three-year period if the licensee has provided alcoholic beverage service training acceptable to the department to all of its employees and reinforces that training with each employee at least every two years. The licensee must demonstrate that ~~T~~the person who made the sale to a minor ~~must have~~ has completed alcoholic beverage service training prior to ~~the sale for~~ the department ~~to~~ considering issu~~ing~~ance of a reprimand.

(8) Aggravating circumstances may result in the imposition of maximum monetary penalties, maximum suspension time or revocation, and will not bind the department to the progressive penalty framework indicated in (3) ~~above~~.

(9) Aggravating circumstances include, but are not limited to:

(a) no effort on the part of a licensee to prevent a violation from occurring;

(b) a licensee's failure to report a violation at the time of renewal;

(c) a licensee's ignoring warnings issued by a regulating authority about compliance problems;

(d) a licensee's failure to timely respond to requests during the investigation of a violation; ~~or~~ and

(e) a violation's significant negative effect on the health and welfare of the community in which the licensee operates.

(10) and (11) remain the same.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-3-301, 16-4-406, 16-6-305, and 16-6-314, MCA

REASONABLE NECESSITY: The department is proposing to amend 42.13.101 to promote public safety and increase licensee compliance with 42.13.106, alterations of premises. This should reduce risk of administrative penalties for licensees if they are aware that alterations without approval will incur a substantial penalty.

42.13.103 DEPARTMENT EXAMINATIONS (1) The department or its duly authorized representative has the right at any time to make an examination of any premises licensed for the sale of alcoholic beverages and to check the books, records, and stock-in-trade, and to make an inventory of the latter. The department or its authorized representatives may immediately seize and remove any alcoholic beverage kept in violation of law.

(2) Any authorized representative as designated in (3) below shall have immediate access to all parts of the licensed premises. Doors of licensed premises shall not be locked while persons other than the licensee or his the licensee's employees are within or upon the licensed premises.

(3) remains the same.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-6-103, MCA

REASONABLE NECESSITY: The department is proposing to amend 42.13.103 for housekeeping purposes only.

42.13.105 APPLICABILITY OF LICENSES; PREMISES DEFINED; GOLF COURSE EXCEPTION; PORTABLE SATELLITE VEHICLE, MOVABLE DEVICES (1) All licenses shall be applicable only to the premises in respect to which they were issued. The premises are described by a floor plan on file with the department which accompanied the application and was approved by the department. The licensee must have possessory interest in the entire premises. No more than one license can be issued for the area described in the floor plan unless the first license has been granted nonuse status. The floor plan may be amended by a licensee submitting an application to alter the licensed premises and gaining department approval pursuant to ARM 42.13.106. Where a licensee conducts, as a single business enterprise, two or more service areas located on the same premises and which have such inter-communication as will enable patrons to move freely from one service area to another without leaving the premises, the various service areas shall be regarded as but one premises for which but one license is required. In all other cases, licenses must be obtained for each service area even though operated in the same building with another service area.

(2) Retail all-beverages licensees operating at a golf course may sell alcoholic beverages and publicly owned golf courses holding a retail beer and table wine license may sell beer and table wine, under the provisions of 16-3-302, MCA, anywhere within the golf course boundaries from portable satellite devices and other moveable satellite devices.

(3) Non-publicly owned golf courses holding retail beer or

~~table wine licenses are restricted to sales of beer and table wines on their premises as defined in (2) above.~~

~~(4)~~ Premises licensed prior to the effective date of this rule that do not meet these standards ~~would~~ will be required to meet the standards described in (1) ~~above~~ when requesting the department to approve an application for transfer of ownership, and/or location or a request to alter the existing licensed premises.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-3-302, 16-3-311, 16-4-404, and 16-6-104, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.105 to bring it into compliance with 16-4-109, MCA, as amended by HB 596 of the 2001 legislative session.

42.13.106 CHANGE OR ALTERATION IN PREMISES (1) ~~A licensee may not change or alter any premises licensed for the sale of alcoholic beverages or change the manner of operation thereby affecting the suitability of the licensed premises, without the prior written consent of the department.~~ Any alteration or change to a licensed premises other than a cosmetic change, as defined in 16-3-311, MCA, must be pre-approved by the department.

(2) A licensee must submit a proposed floor plan to the department prior to making alterations, and complete an alteration questionnaire provided by the department.

(3) Upon approval by the department, the licensee may start alterations. In the event the premises becomes inoperable, the licensee must request nonuse status.

(4) Upon completion of the alterations, the licensee must notify the department and provide respective building, health, and fire code approval. A premises inspection will be arranged by the department. In the case of an addition of an area not already licensed, the licensee must first have a premises inspected by the department of justice.

(5) Upon written approval by the department, the alteration is considered complete and any new addition will be considered part of the floor plan.

(6) Any alteration or change to a licensed premises without prior approval as set forth in (1) will be considered a violation and subject to penalty.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-1-303, ~~and Title 16, chapter 4,~~ 16-3-311 and 16-4-402, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.106 to outline the procedure for obtaining department approval for an alteration. The amendment promotes public safety and reduces risk of administrative penalties for licensees by making licensees aware of the correct procedure.

42.13.107 EXTENSION OF TIME FOR NONUSE (1) Any licensee or applicant requesting an extension of time for nonuse of a license in accordance with 16-3-310, MCA, must furnish written

evidence of the reasons for ~~his~~ failure to place the license in operation within the time prescribed.

(2) The department may grant up to three extensions of nonuse status in increments not exceeding 90 days. If the license is not put into use within one year, the department must consider ~~the~~ quota limitations when determining whether further extensions of nonuse status may be granted.

(a) ~~If the license quota is not full the license may be granted extensions of nonuse status in excess of one year after the department determines the extensions are justified and the department has no indication that the community needs another license in use or no party has demonstrated an interest in operating an alcoholic beverages business~~ If the department determines the extensions are justified and the license quota is not full, the licensee may be granted an extension of nonuse status in excess of one year.

(b) If the license quota is full, the licensee shall be required to attend an informal conference conducted ~~at~~ by the ~~liquor division offices~~ department of revenue in Helena to afford the licensee or person(s) holding a security interest in the license the opportunity to present evidence establishing justification for any further extension of nonuse status. If the department determines additional nonuse time is justified, a letter granting nonuse status will be issued. If the department determines continued nonuse status is not justified, the department will issue a notice to lapse the license.

(c) If there are no quota limitations on the type of license issued nonuse status, 90-day extensions may be granted each time a written statement is received from the licensee, ~~his~~ the licensee's representative, or the secured party that includes an explanation of the need for nonuse.

(3) The department may deny requests for extensions of nonuse status if the licensee or those person(s) having a security interest in the license fail to establish any progress towards putting the license into use.

(4) Requests for extension of nonuse status based on voluntary closure due to adverse economic conditions or repeated requests based on a proposed sale of a license will not constitute sufficient grounds for extending nonuse status. An earnest money receipt signed by the proposed purchaser is needed for proof of a pending sale and is required for justification of nonuse status if the quota is full and the license has been inactive over one year.

(5) Licenses denied extension of nonuse status are subject to the lapse provisions of 16-3-310, MCA.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-3-310, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.107 for housekeeping purposes only.

42.13.108 LAPSE OF LICENSE FOR NONUSE (1) Any retail license not used in ~~a going~~ an operating establishment for a period of 90 consecutive days without department approval shall

be lapsed for nonuse in accordance with 16-3-310, MCA.

(2) For the purpose of this rule "week" refers to any consecutive ~~7~~ seven-day period.

(3) An establishment is ~~a going~~ an operating establishment if it meets the following criteria:

(a) ~~I~~it is open at least 20 hours a week for any four weeks in a 90-day period;

(b) ~~I~~inventory of at least ~~ten~~ 10 cases of alcoholic beverages is maintained on the premises each day that the establishment is open;

(c) ~~A~~alcoholic beverages are displayed for sale in the purchase or consumption area of the establishment each day that the establishment is open; and

(d) ~~T~~the sale of alcoholic beverages is at least $50 each week that the establishment is open.

(4) A licensee who is unable to maintain ~~a going~~ an operating establishment must request in writing the department's approval to close the establishment for a period ~~of~~ greater than 90 days~~' duration~~.

(a) In the case of an establishment that is operated seasonally, the department must receive a written request from the licensee to close for a specified period greater than 90 days~~' duration~~. The department will authorize the closure and will not lapse the license if it determines that the premises is a dude ranch, resort, park hotel, tourist facility or like business. The closure is only effective from the date of the department's letter of authorization through the end of the specified period~~s~~.

(b) In the case of closure that was reasonably beyond the control of the licensee, ~~the department must receive from the licensee a written request to exempt a closure greater than 90 days' duration~~ the licensee must submit a written request to the department for authorization to close for greater than 90 days. The department will ~~accept~~ authorize a closure and will not lapse the license if it determines that the cause was due to loss of lease for the premises, destruction of the premises, bankruptcy or foreclosure action, serious illness or death of the licensee, or like circumstances. The closure is only effective for the period specified in the department's letter of ~~acceptance~~ authorization.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-3-310, MCA

REASONABLE NECESSITY: The department is proposing to amend 42.13.108 to comply with the enactment of 16-4-109, et seq., MCA, as amended by SB 48 of the 2001 legislative session. No fee will be required of those wineries who are direct-shipping wines to licensed connoisseurs.

42.13.109 SEVEN-DAY CREDIT LIMITATION (1) A Montana brewer license, a beer wholesaler license, a Montana winery registration, or a table wine distributor license will be suspended or revoked or otherwise sanctioned under 16-4-406, MCA, if credible evidence demonstrates that a brewer, a winery,

a wholesaler, or distributor extended credit to a retail licensee for more than seven days.

(2) A retailer's license will be suspended or revoked or otherwise sanctioned under 16-4-406, MCA, if credible evidence demonstrates that the retail~~er~~ licensee accepted credit extended by a brewer or a beer wholesaler for more than seven days for the purchase of beer.

(3) The first day of the ~~7~~ seven-day credit period begins at 8:00 a.m. on the day after the delivery.

(4) Criteria which demonstrates credit has been extended are:

(a) wholesaler delivered product to retailer;

(b) retailer or wholesaler does not have documentation of payment;

(c) wholesaler has been without payment for more than seven days; and

(d) wholesaler does not have documentation of efforts to collect payment; or

(e) (a), (b), (c), and the wholesaler has no documentation to show further product delivery was terminated.

(5) Criteria which demonstrates credit has been accepted are:

(a) wholesaler delivered product to retailer;

(b) retailer or wholesaler does not have documentation of payment;

(c) wholesaler has been without payment for more than seven days; and

(d) product has not been returned by retailer.

(6) When a license is sold and a debt to a beer and wine wholesaler remains unpaid, the debt becomes the obligation of the new owner of the license. Based on the seven-day credit limitation~~s~~, the wholesaler may not sell to the new licensee until the previous debt is paid in full.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-3-243, 16-3-406, and 16-4-404, MCA

REASONABLE NECESSITY: The department is proposing to amend 42.13.109 for housekeeping purposes only.

42.13.201 LABELING REQUIREMENTS (1) No licensee shall sell, offer for sale, or deliver any liquor (distilled spirits, wine, or malt beverages) unless the containers thereof are marked, branded, or labeled in conformity with this ~~regulation~~ rule and ARM 42.13.221.

(2) Alcohol content by weight must be noted on the labels of all malt beverages sold or manufactured in Montana~~;~~, ~~provided,~~ except ~~that the regulation~~ this rule shall not apply ~~in the case of~~ to beer containing ~~not more~~ less than 7% ~~of~~ alcohol by weight.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-1-303, MCA

REASONABLE NECESSITY: The department is proposing to amend 42.13.201 for housekeeping purposes only.

42.13.221 ADOPTION OF CERTAIN FEDERAL REGULATIONS (1) The United States department of treasury, bureau of alcohol, tobacco, and firearms regulations 1, 4, 5, ~~6.91, 6.94,~~ 6, and 7, as set forth in 27 CFR, as revised April 1, 2001, available from the U.S. Government Printing Office, Washington, DC 20402-0001, ~~along with any amendments and supplements~~ are adopted by reference. These regulations apply to basic permit requirements, tied-house restrictions, labeling, sampling, and advertising of liquor (distilled spirits, wine, and malt beverages) sold within this state except where the provisions of these federal regulations may be contrary to or inconsistent with the provisions of Montana law or ~~regulations~~ rules of the department.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-3-103 and 16-3-244, MCA

REASONABLE NECESSITY: The department is proposing to amend 42.13.221 to correct the reference to the federal statutes and terminology.

42.13.222 BEER WHOLESALER AND TABLE WINE DISTRIBUTOR RECORDKEEPING REQUIREMENTS (1) Beer wholesalers and table wine distributors shall keep and maintain records at their place of business of all beer or table wine furnished or sold to retailers. These records must contain the following information:

(a) name and address of retailer;
~~(b)~~(c) date item was sold or furnished;
~~(c)~~(d) date item was delivered;
~~(d)~~(b) item that was sold or furnished;
(e) ~~retailer~~ cost ~~per~~ of item sold; and
(f) date wholesaler or distributor received retailer's payment.

(2) Commercial records or invoices may be used if they contain the information listed in (1)(a) through (f) ~~above~~.

(3) Beer wholesalers shall keep and maintain records at their place of business of visits to retailers within their assigned territory, as specified under Title 16, MCA, for department inspection.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-3-220, 16-3-243, 16-3-404, and 16-3-406, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.222 for housekeeping purposes only.

42.13.301 STORAGE OF ALCOHOLIC BEVERAGES (1) A licensee may store alcoholic beverages only on the licensee's licensed premises.

(2) Only those alcoholic beverages for which the premises are specifically licensed may be received, accepted, or stored. All alcoholic beverages must be purchased through an agency liquor store, or through a licensed wholesaler, domestic winery, or domestic brewery.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-3-201 and 16-6-301, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.301 to clarify that alcoholic beverages may not be purchased from any business other than those stated in the rule.

42.13.304 STORAGE RESULTING IN TREATMENT AS BEER WHOLE- SALER OR TABLE WINE DISTRIBUTOR (1) ~~Whenever beer or table wine is held in storage in wholesaling or jobbing quantities at a fixed place of business and deliveries are made or orders filled by the person in charge or the employee, the department will treat these persons as carrying on the business of a wholesaler or distributor, requiring such person to have a license for such place of business, except in the case of a brewer's storage depot as provided in 16-3-230, MCA.~~ A license will be required for a fixed place of business operating as a wholesaler or distributor when:

(a) beer or table wine is held in storage for wholesaling; or

(b) jobbing quantities, at such place of business, include filling orders and making deliveries.

(2) The person in charge will be required to have a license, except in the case of a brewer's storage depot as provided in 16-3-230, MCA.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-3-230, 16-4-103, and 16-6-104, MCA

REASONABLE NECESSITY: The department is proposing to amend 42.13.304 for clarification purposes only.

42.13.305 EXCHANGE OR RETURN OF BEER OR TABLE WINE PRODUCT (1) A beer wholesaler or a table wine distributor may exchange or accept return of product if the reason constitutes an ordinary and usual commercial reason~~s~~ such as ~~follows~~:

(a) defective product;
(b) error in delivery;
(c) product unlawful to sell;
(d) termination of retail business or wholesale franchise;
(e) change in product;
(f) discontinued product; or
(g) seasonal business.

(2) A commercial reason ~~N~~not considered ordinary and usual ~~commercial reasons are~~ would be:

(a) overstocked product;
(b) slow moving product; or
(c) seasonal product.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-3-201, MCA

REASONABLE NECESSITY: The department is proposing to amend 42.13.305 for housekeeping purposes only.

42.13.401 IMPORTATION OF WINE (1) Each winery or importer desiring to ship table wines to licensed distributors within the state must submit an application for registration to the department as specified ~~under~~ in 16-4-107, MCA. Each application must be accompanied by a registration fee ~~as shown~~ applicable in (2) ~~below~~

and a copy of each product label the winery or importer intends to ship into the state. Approval will be granted by the department annually on or before October 1. The department must be notified in writing of any changes, additions, or deletions in product line prior to distribution in Montana.

(2) The registration fee shall be as follows:

(a) 0-60 cases no charge

~~(a)~~(b) ~~1~~ 61-500 cases = $25

~~(b)~~(c) 501-1000 cases = $50

~~(c)~~(d) 1001-1500 cases = $100

~~(d)~~(e) 1501-2000 cases = $200

~~(e)~~(f) 2001 + cases = $400

(3) ~~No table wines may be shipped into the state until such registration is granted by the department.~~

~~(4)~~ Any winery or importer failing to renew or failing to file copies of its agreements of distributorship pursuant to 16-3-402, MCA, will be subject to cancellation or suspension as provided in 16-4-107, MCA.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-107, MCA

REASONABLE NECESSITY: The department is proposing to amend 42.13.401 to implement the changes made to the law through the enactment of HB 493 by the 2001 legislature. The reduction in registration fees will result in an approximate decrease of $250 annually from 10 registrants.

42.13.402 WINE DISTRIBUTOR'S MONTHLY REPORTS (1) Each table wine distributor shall file with the department a table wine distributor's monthly tax report (Form AA-50), as required by 16-3-404, MCA, showing the number of liters sold during the previous month. The form must be filed whether or not the distributor has sold any wine during a month. The form may be obtained from the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805.

(2) The form must be accompanied by payment of the tax due ~~under~~ pursuant to 16-1-411, MCA.

(3) Failure to file the form or pay the table wine tax is sufficient cause for the assessment of penalties and interest in accordance with 15-1-216 and 16-1-411, MCA, and other penalties provided in 16-4-406, MCA.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 15-1-216, 16-1-411, 16-3-404, and 16-4-406, MCA

REASONABLE NECESSITY: The department is proposing to amend 42.13.402 for housekeeping purposes only.

42.13.601 SMALL BREWERY RESTRICTIONS (1) Product ~~S~~samples may only be provided in the sample room as shown on the floor plan which has been submitted and approved by the department.

(2) A small brewery is not a retail beer licensee as defined in 16-4-105, MCA.

(3) A sample room may include a deck or patio, as long as the deck or patio is immediately adjacent to the brewery sample

room and can only be accessed from the sample room. The deck or patio must be enclosed in such a manner as to restrict its access and view from the general public on the street or sidewalk.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-3-213 and 16-3-214, MCA

REASONABLE NECESSITY: The department is proposing to amend 42.13.601 to clarify that sample rooms may include decks and patios as long as they meet certain specifications. The amendment implements an agreement between industry members and the department.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

and must be received no later than July 29, 2002.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Kurt G. Alme
KURT G. ALME
Director of Revenue

Certified to Secretary of State June 17, 2002

**BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA**

In the matter of the adoption of new rule I definitions, new rule II establishment of investment accounts, new rule III spending accounts, new rule IV agreement with the county treasurer, new rule V payments into an investment account, new rule VI internal controls and accounting records, new rule VII closure of a school district fund, new rule VIII cash and budget transfers between school district funds and new rule IX school flexibility payment, the proposed amendment of ARM 10.7.112, 10.7.114, 10.10.307, 10.10.309, 10.10.407, 10.15.101, 10.16.3803, 10.16.3804, 10.16.3806, 10.16.3807, 10.16.3809 through 10.16.3812, 10.20.103, 10.20.105, 10.21.101B, 10.21.101D, 10.21.101E, 10.22.102, 10.22.205, 10.23.102, 10.23.102A, 10.23.108 and 10.30.102, the amendment and transfer of ARM 10.10.306 and 10.10.317, the transfer of 10.10.308 and the repeal of ARM 10.23.107 regarding basic equalization levy shortfall	)	NOTICE OF ADOPTION, AMENDMENT, AMENDMENT AND TRANSFER, TRANSFER, AND REPEAL

TO: All Concerned Persons

1. On March 28, 2002, the Superintendent of Public Instruction published notice of the proposed adoption, amendment, amendment and transfer, transfer and repeal of rules concerning investment accounts and school funding at page 825 of the 2002 Montana Administrative Register, Issue Number 6.

2. The Superintendent of Public Instruction adopted the following new rules exactly as proposed.

NEW RULE I	ARM	10.10.610	DEFINITIONS
NEW RULE III		10.10.612	SPENDING INVESTMENT ACCOUNTS
NEW RULE IV		10.10.613	AGREEMENT WITH THE COUNTY TREASURER
NEW RULE V		10.10.614	PAYMENTS INTO AN INVESTMENT ACCOUNT
NEW RULE VI		10.10.615	INTERNAL CONTROLS AND

ACCOUNTING RECORDS
NEW RULE IX 10.10.318 SCHOOL FLEXIBILITY PAYMENT

3. The Superintendent of Public Instruction adopted the following new rules with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II [ARM 10.10.611] ESTABLISHMENT OF INVESTMENT ACCOUNTS (1) through (4)(c) remain as proposed.

(d) agrees to purchase only the types of investments allowed for schools by law pursuant to ~~7-6-202, 7-6-213, and~~ 20-9-213(4), MCA; and

(e) through (vii) remain as proposed.

NEW RULE VII [ARM 10.10.319] CLOSURE OF A SCHOOL DISTRICT FUND ~~(1) An "inactive" fund for purposes of this sub-chapter and 20-9-201(3), MCA, is a fund that has had no revenue or expenditure activity for at least three fiscal years, other than collection of prior year revenues.~~

(2) through (8) remain as proposed but are renumbered (1) through (7).

NEW RULE VIII [ARM 10.10.320] CASH AND BUDGET TRANSFERS BETWEEN SCHOOL DISTRICT FUNDS (1) through (3) remain as proposed.

(4) Pursuant to ~~20-10-407~~ 20-10-147, MCA, when all the buses of a school district have been sold or otherwise disposed of, trustees may transfer any portion of the bus depreciation reserve fund balance to any other fund of the district contingent on voter approval.

(5) through (11) remain as proposed.

4. The Superintendent of Public Instruction amended ARM 10.7.114, 10.10.307, 10.10.309, 10.10.407, 10.16.3803, 10.16.3804, 10.16.3806, 10.16.3807, 10.16.3809 through 10.16.3812, 10.20.103, 10.20.105, 10.21.101B, 10.21.101D, 10.21.101E, 10.22.102, 10.22.205, 10.23.102, 10.23.102A, 10.23.108 and 10.30.102 exactly as proposed.

5. The Superintendent of Public Instruction amended the following rules with the following changes, stricken matter interlined, new matter underlined:

10.7.112 SUMMARY OF REQUIREMENTS FOR BUS TRANSPORTATION FOR ELIGIBILITY FOR STATE REIMBURSEMENT (1) through (9) remain the same.

(10) A school district shall not claim state and county transportation aid for the district's or cooperative's conveyance of students to and from alternative sites, buildings or other locations where services or programs are offered during the school day, such as partial-day special education services provided by a cooperative or classes at different buildings of the school district or community. Pursuant to 20-10-145, MCA, school districts may claim state and county transportation

reimbursement for conveyance of a pupil from the student's home to and from the location of the student's center based day program for the school day, such as a day treatment program or special education preschool program that is operated by a cooperative or district interlocal agreement.

10.15.101 DEFINITIONS The following definitions apply to ARM Title 10, chapters 16, 20, 21, 22, and 23:

(1) through (32) remain as proposed.

(33) "Maximum general fund budget" or "maximum GFB" means the maximum general fund budget a district is allowed to adopt. It is the sum of: 100% of the district's basic and per-ANB entitlements; up to 200% of the district's special education allowable cost payment pursuant to 20-9-306(8), MCA; and up to 100% of the district's related services block grant payment to cooperatives.

(34) through (57) remain as proposed.

6. The Superintendent of Public Instruction amended ARM 10.10.306 exactly as proposed, but determined not to transfer said rule.

7. The Superintendent of Public Instruction amended and transferred ARM 10.10.317 to ARM 10.10.625 INVESTMENT POOLS as proposed.

8. The Superintendent of Public Instruction transferred ARM 10.10.308 to ARM 10.10.601 COUNTY INVESTMENT OF SCHOOL DISTRICT FUNDS as proposed.

9. The Superintendent of Public Instruction repealed ARM 10.23.107 Basic Equalization Levy Shortfall as proposed.

10. The Superintendent of Public Instruction has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received and the Superintendent's responses.

New Rule I Definitions

COMMENT NO. 1: One commenter stated that the definitions in this new rule need fine tuning to comply with 20-9-235, MCA and that the definitions should specify that the district is custodian of the funds.

With respect to the spending investment account definition, the commenter stated that the rule should be clarified to note that a "subsidiary" checking account can be either an account held by the institution maintaining the investment account, or can be held by another institution if there is a binding agreement between the two institutions to sweep funds out of the investment account and into the checking account as necessary to cover checks presented for payment. The commenter stated that this change is necessary because of the legal relationships

between investment and checking accounts. Some financial institutions have separate legal entities that manage their checking and investment accounts.

RESPONSE: Rule I generally defines three terms that are used throughout Rules II – VI, including "non-spending investment account," "school district investment account," and "spending investment account." The definitions distinguish the difference between a spending and a non-spending investment account, and between an investment account established under the provisions of 20-9-235, MCA and a unified investment program established under 20-9-213, MCA. The custody of funds that are invested in these accounts resides with the financial institution(s) selected by the Trustees.

Senate Bill 260 did not limit the meaning of the term "subsidiary account" as suggested by the commenter. When a bill does not define a general term like "subsidiary", the broader, ordinary dictionary meaning applies. The two possible scenarios suggested by the commenter fall within that broader meaning. This rule does not prohibit financial institutions from "sweeping" funds from an investment account to a subsidiary checking account.

<u>New Rule II Establishment of Investment Accounts</u>

COMMENT NO. 2: Two commenters objected to having different investment accounts for each district fund. One stated that he accounts for 38 different funds and that it would be easier to have one investment account and keep the funds separate by means of their accounting methods.

COMMENT NO. 3: One commenter agreed with the previous comment but stated that the law says the funds have to be maintained in separate investment accounts and that this may be a change that needs to be presented to the legislature.

RESPONSE: The Superintendent agrees with COMMENT NO. 3. Section 20-9-235(1), MCA requires the trustees to establish a "separate account for each fund from which transfers are made." Rule II is consistent with this law.

COMMENT NO. 4: One commenter stated that he felt (4) is overly narrow in reciting elements of the law and felt that (4)(d) should be amended to reflect the clearly articulated authority of school districts to invest in areas set forth in Title 17.

RESPONSE: Trustees' authority to invest district funds is governed in part by 20-9-213 and 20-9-235, MCA. Montana law provides that, "A district may invest money under the state unified investment program established in Title 17, chapter 6, or in a unified investment program with the county treasurer, with other school districts, or with any other political subdivision if the unified investment program is limited to

investments that meet the requirements of this subsection (4), including those investments authorized by the board of investments under Title 17, chapter 6." The word "including" in this quoted language may be ambiguous. In this context, the Superintendent believes the legislature intended "including" to mean "plus" or "or." The Superintendent therefore amends New Rule II to reference generally trustee authority under 20-9-213(4), MCA.

New Rule III Spending Accounts

COMMENT NO. 5: One commenter stated that they had the same concerns with the use of the term "subsidiary" in this rule as identified in connection with New Rule I. He is also concerned about the implication in (1)(a) that funds must be held in the spending account at the time the check is written. He stated that the current technology is such that the funds typically will not be held in the spending account, but in the investment account until the check is presented for payment. At that time the funds would be swept out of the investment account and into the checking account.

RESPONSE: The commenter's term "spending account" is not defined in Rule I nor is it used in Rule III, so we assume the commenter is referring to the checking account that is associated with a spending investment account. There is no requirement that funds be held in a checking account at the time a check is written, and nothing in the rule implies otherwise.

New Rule VI Internal Controls and Accounting Records

COMMENT NO. 6: One commenter stated that it was more cumbersome to require the school districts to collect the revenue and then deposit the funds with the county treasurer and then request the county treasurer to deposit the funds in the investment account.

COMMENT NO. 7: One commenter stated that the original intent of the investment pool was to allow the school district to have a checking account to be able to pay bills without having to go through the warrant process with the treasurer's office. He stated that this rule requires that they still have to go through the county treasurer's office and in essence adds another step in the process. He feels that it extends the time that they don't have district funds invested.

RESPONSE: Section 20-9-235(5), MCA says "Except for electronic transfers of BASE aid and state advances for county equalization sent directly to a participating district's investment account...the county treasurer shall, as required by law, continue to collect money and report to the districts that elect to establish a school district investment account." Districts can, however, avoid writing warrants through the county treasurer's office by establishing a spending investment account from which district expenditures are paid using electronic

payments or checks. Any other arrangement would require a statutory change. See 20-9-212(5) and 20-9-235(5), MCA.

COMMENT NO. 8: One commenter stated that to require a school district to use the county treasurer as a go between to handle transfers from an investment account to a checking account as well as transfers from fund to fund is inefficient and contrary to the law. He recommended that the rule be amended to clearly state that a district may use an investment account for any of the following purposes: to make direct electronic payments to vendors without any transfer to a county-held fund of the district, to sweep funds into a "subsidiary" checking account, with subsidiary being defined as suggested above, or to return to the county-held fund so that the district can issue warrants on such funds from the county-held fund.

He further stated that with all of the other accountability features specified in the rules, it seemed onerous to require that a district flow funds from the investment account to the treasurer to the checking account. He also felt that the lost time and investment opportunity could reduce school income from the investments.

RESPONSE: This rule neither requires nor implies that a district must flow funds from an investment account to the county treasurer, then from the county treasurer to a checking account.

The authority to use an investment account for direct electronic payments to vendors without transfer to a county-held fund is provided in Rule III; the authority to transfer funds from an investment account to a subsidiary checking account is also provided in Rule III; and the authority to return monies to the county so the district can issue warrants from the county-held fund is provided by definition of a non-spending investment account in Rule I.

<u>New Rule VII Closure of a School District Fund</u>

COMMENT NO. 9: One commenter stated that this rule defines an inactive fund in a more restrictive manner than provided by law, in that the law provides that the decision on determining when a fund is inactive rests with the trustees. He recommends that the provision in (1) be stricken. The commenter also argued that (5) is more restrictive than Senate Bill 436 intended and should be removed.

RESPONSE: The Superintendent agrees that the determination of when a fund is inactive is a judgment left to trustees pursuant to 20-9-201(3)(a), MCA and amends New Rule VII accordingly. The Superintendent believes that 20-10-147(4), MCA is limited to situations in which Trustees sell <u>all</u> the district's buses and does not necessarily address the closure of the bus depreciation reserve fund. Closure of such fund is now governed by 20-9-

201(3), MCA.

ARM 10.7.112 Summary of Requirements for Bus Transportation for Eligibility for State Reimbursement

COMMENT NO. 10: One commenter feels the rule could be misinterpreted to deny state transportation aid to joint-district or cooperative center based programs like preschool programs or day treatment programs that depend upon state aid to transport students to and from their home to the cooperative sites for their school day. He recommends that the rule specify that it does not apply where students are transported to and from center based day programs for a school day such as joint districts day treatment programs or cooperative special education preschool programs.

RESPONSE: The Superintendent agrees with the clarification offered by the commenter and adopts the rule with changes as set forth above.

ARM 10.15.101 Definitions

COMMENT NO. 11: One commenter stated that he was a proponent of the proposed rules but felt that (33) could be explained better.

RESPONSE: The Superintendent agrees with the comment and adopts the rule with changes as set forth above.

/s/ Linda McCulloch
Linda McCulloch
Superintendent
Office of Public Instruction

/s/ Jeffrey A. Weldon
Jeffrey A. Weldon
Rule Reviewer
Office of Public Instruction

Certified to the Secretary of State, June 17, 2002.

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 17.8.101, 17.8.102, 17.8.302, 17.8.401, 17.8.801, 17.8.901 and 17.8.1005, pertaining to definitions and incorporation by reference of current federal regulations and other materials into air quality rules	NOTICE OF AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On February 14, 2002, the Board of Environmental Review published a notice of proposed amendment of the above-stated rules at page 268, 2002 Montana Administrative Register, issue number 3.

2. The Board amended ARM 17.8.101, 17.8.102, 17.8.302, 17.8.401, 17.8.801 and 17.8.901 exactly as proposed. The Board amended ARM 17.8.1005 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.8.1005 ADDITIONAL CONDITIONS OF AIR QUALITY PRE-CONSTRUCTION PERMIT (1) through (5) remain the same as proposed.

(6) Emission reductions (air quality offsets) under (1)(c) must also comply with the additional requirements for determining the baseline and magnitude of emission reductions (air quality offsets) contained in ARM 17.8.905(1)(c) and 17.8.906, except that ARM 17.8.906~~(6)~~(7) through ~~(8)~~(9) shall not be applicable to offsets required under this subchapter.

3. The following comment was received and appears with the Board's response:

COMMENT NO. 1: The Board received one comment from Laurie Ostrand, U.S. Environmental Protection Agency (EPA) Region VIII. Ms. Ostrand commented that, when EPA pointed out an error in an internal reference in ARM 17.8.1005(6), prior to initiation of this rulemaking, EPA's proposed correction was not accurate. Ms. Ostrand commented that the correct reference should have been ARM 17.8.906(7) through (9), instead of ARM 17.8.906(6) through (8). Ms. Ostrand commented that ARM 17.8.905(1)(c) also contains the same incorrect reference, and suggested that the Board correct the reference in that rule.

RESPONSE: The Board has amended the reference in ARM 17.8.1005, shown above, as suggested. ARM 17.8.905 was not included in this notice of proposed rulemaking, so any

amendment to that rule would be outside the scope of the public notice of rulemaking. The Board will propose to correct the reference in ARM 17.8.905 in a later rulemaking proceeding.

BOARD OF ENVIRONMENTAL REVIEW

By: *JOSEPH W. RUSSELL*
JOSEPH W. RUSSELL, M.P.H.
Chairman

Reviewed by:

DAVID RUSOFF
DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State, June 17, 2002.

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 17.30.2003 pertaining to enforcement actions for administrative penalties	NOTICE OF AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On February 14, 2002, the Board of Environmental Review published a notice of public hearing on the proposed amendment of the above-stated rule at page 263, 2002 Montana Administrative Register, issue number 3. The hearing was held on April 9, 2002.

2. The Board has amended the rule as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.30.2003 ENFORCEMENT ACTIONS FOR ADMINISTRATIVE PENALTIES (1) remains the same as proposed.

(2) ~~When the department has reason to believe that a violation has occurred~~ Upon determination that a violation has occurred, the department may initiate an administrative penalty action in accordance with 75-5-611, MCA, and this rule. Except for a violation specified under (7), the department shall first issue a written notice letter to a violator by certified mail or personal delivery that:

(a) through (8) remain the same as proposed.

3. The following comments were received and appear with the Board's responses:

Comment No. 1: A commentor supported the proposed amendments and appreciated being included in the process.

Response: Comment noted.

Comment No. 2: In the proposed ARM 17.30.2003(2), the phrase "When the department has reason to believe that a violation occurred" is too subjective. The department could initiate an administrative penalty action in situations where it did not have credible evidence that a violation occurred.

Response: Preliminary drafts of the proposed amendments were discussed with various interest groups to obtain support. The proposed draft of ARM 17.30.2003(2) contained the phrase: "Upon determination that a violation has occurred." When the final proposed amendment notice was written, this phrase was changed to "When the department has reason to believe that a violation has occurred". The language was changed to conform to the language in 75-5-611(1), MCA, and the department does not believe that the change had any substantive effect. However, the department has agreed that the language can be changed to the wording that was proposed in the preliminary

draft. The final adoption notice has been modified as shown above.

Comment No. 3: The proposed amendments conflict with the legislative intent of 75-5-617, MCA. The department is trying to grant itself civil penalty authority not granted or intended by the legislature. Section 75-5-617(2), MCA, prohibits the department from assessing administrative penalties for any violation, except in cases that pose an imminent threat to human health, safety or welfare, or to the environment. In accordance with 75-5-617(2), MCA, a notice letter must be sent to a violator prior to the assessment of an administrative penalty, except in cases that pose an imminent threat. If the violator corrects the violation in accordance with the notice letter, the department is not authorized to assess a penalty. The proposed rule, which creates a process to assess an administrative penalty for certain violations of 75-5-605, MCA, is contrary to the intent of the statutes as evidenced in the legislative record.

Response: The Board agrees that under 75-5-617, MCA, a notice letter must be sent prior to assessing a penalty in all cases, except those cases that pose an imminent threat. The amendments specifically implement the notice requirements of 75-5-617, MCA. The pertinent language is contained in ARM 17.30.2003(1): "Before initiating an administrative penalty action under this rule, the department shall first issue a notice letter, in accordance with 75-5-617, MCA, notifying the person of the violation and requiring compliance. The department is not required to issue a notice letter under 75-5-617, MCA, if the violation represents an imminent threat to human health, safety, welfare or to the environment."

The proposed amendments do not grant the department civil penalty authority not granted or intended by the legislature. Section 75-5-617(2), MCA, does not restrict the department from assessing a penalty in cases where the violator complies with the requirements of the notice letter sent in accordance with 75-5-617, MCA. The pertinent language in 75-5-617, MCA, states: "If the person fails to respond to the conditions in the department's letter, then the department shall take further action" (emphasis added). By its plain language, this section is prescriptive rather than restrictive. It requires the department to take an action if the person fails to satisfy the conditions in the notice letter, but it does not restrict or even address the department's options if the person satisfies the conditions in the letter. The legislative record also does not support the proposed restrictive interpretation of the statute. Such an interpretation could lead to the incongruous result of prohibiting the department from taking enforcement action even in cases where a violation was knowing or intentional. Finally, neither 75-5-617, MCA, nor 75-5-611, MCA, limit the department's administrative penalty authority to cases involving an imminent threat.

If a person satisfies the requirements of the notice letter issued under 75-5-617, MCA, the department may in certain circumstances still take an enforcement action, including the assessment of a penalty. The circumstances in which a penalty may be assessed are set out in the new ARM 17.30.2003(7). Penalties are allowed only for violations that are Class I or are of major extent and gravity as defined in the rules.

Comment No. 4: A commentor was concerned about the overall fairness of the proposed amendments. No penalty should be imposed unless that person has received notice and has failed to correct the condition, if the condition can be remedied. Also, if a violation occurs because of natural phenomena or without knowledge or notice, there should be no penalty. No penalty should be imposed unless a person has had notice and has failed to remedy the condition.

Response: The amendments do require the department to provide informal notice and opportunity to comply as required by 75-5-617, MCA. See Response to Comment No. 3. In many cases, the correction of the condition after informal notice will result in the department closing the matter without formal enforcement action. However, the amendments give the department the ability to assess penalties for violations that have been corrected. As stated in the Response to Comment No. 3, the amendments simply implement the authority contained in 75-5-611, MCA. The amendments also limit the department's administrative penalty authority to violations that are Class I, or are of major extent and gravity as defined in the rules. Although the water quality statutes are strict liability laws and violations can occur through no fault of the responsible party, the department considers various factors before determining that formal enforcement action is warranted. Factors considered include the degree to which the violator was at fault, the extent of harm to health or the environment, any history of violations, and whether a penalty is needed to deter future noncompliance. These factors are also considered by the department when establishing the amount of a penalty, if one is assessed.

Comment No. 5: It is not appropriate to strike ARM 17.30.2003(6). This rule states that the department shall notify the violator, in writing, within 30 days of the resolution of an enforcement action. It is best to have a paper trail to document resolution of an enforcement action. The written response should be sent within seven days.

Response: ARM 17.30.2003(6) was deleted because it is redundant. In all administrative enforcement cases, the resolution of the enforcement action is documented with a copy of the document sent to the violator. If the parties enter into a settlement to resolve a violation, the department issues an Administrative Order on Consent that is signed by both the department and the settlor. A cover letter and a copy of the signed order are sent to the settlor. If the

parties do not settle, the department issues a unilateral order that compels an action by the violator. Upon the resolution of a unilateral order, the department issues a Release. A cover letter and a copy of the Release are sent to the violator. An additional letter, as required by ARM 17.30.2003(6), is not necessary.

Comment No. 6: Under the proposed rule, the department would not be required to give advance notice of an administrative penalty proceeding for a violation of 75-5-605, MCA, where the violation was a Class I violation or of major extent and gravity. The rules also allow the department to proceed with a judicial enforcement action without advance notice and opportunity to comply.

Response: The rule, as amended, would require that a notice be issued under 75-5-617, MCA, in all administrative penalty cases except where a violation represents an imminent threat to human health, safety, welfare or to the environment. See Response to Comment No. 3. Although not addressed in the amendments, which only address administrative actions, the notice under 75-5-617, MCA, must also be issued before the department initiates a judicial action under another section of the water quality statutes.

Comment No. 7: If no administrative penalty is assessed, the rule should provide that the alleged violator should not be identified in Department of Environmental Quality records as a violator.

Response: This issue is outside the scope of the present rulemaking. Procedures for considering past history of violations are set out in ARM 17.30.2005, which is not being amended at this time. ARM 17.30.2005(2)(c)(i) requires the department to count any violation for which the violator has received written notice within the past three years, regardless of whether a penalty was paid. The rule reflects the current water quality administrative enforcement policy that, for purposes of identifying patterns of noncompliance, all violations should be considered, not just those serious enough to warrant a penalty. The only violations not to be considered are those for which the violation notice or order was vacated or is subject to administrative or judicial appeal.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

JAMES M. MADDEN
JAMES M. MADDEN
Rule Reviewer

By: *JOSEPH W. RUSSELL*
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State June 17, 2002.

**BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 23.15.101, 23.15.102, 23.15.201, 23.15.202, 23.15.203, 23.15.205, 23.15.301, and 23.15.310, creating the office of victims services and restorative justice	)	NOTICE OF AMENDMENT

To: All Concerned Persons

1. On May 16, 2002, the Department of Justice published notice of the proposed amendment of ARM 23.15.101, 23.15.102, 23.15.201, 23.15.202, 23.15.203, 23.15.205, 23.15.301, and 23.15.310 to reflect the creation of the office of victims services and restorative justice at page 1382, 2002 Montana Administrative Register, issue number 9.

2. No public hearing was requested and no comments were received.

3. The Department of Justice has amended ARM 23.15.101, 23.15.102, 23.15.201, 23.15.202, 23.15.203, 23.15.205, 23.15.301, and 23.15.310 as proposed.

By: /s/ Mike McGrath
MIKE McGRATH, Attorney General

/s/ Ali Sheppard
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State June 17, 2002.

**BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 23.17.311 regarding Montana Law Enforcement Academy student academic performance requirements for the the basic course	))))))	NOTICE OF AMENDMENT

To: All Concerned Persons

1. On May 16, 2002, the Department of Justice published notice of the proposed amendment of ARM 23.17.311 regarding Montana Law Enforcement Academy student academic performance requirements for the basic course at page 1386, 2002 Montana Administrative Register, issue number 9.

2. No public hearing was requested and no comments were received.

3. The Department of Justice has amended ARM 23.17.311 as proposed.

By: /s/ Mike McGrath
MIKE McGRATH, Attorney General
Department of Justice

/s/ Ali Sheppard
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State June 17, 2002.

BEFORE THE STATE ELECTRICAL BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the transfer of ARM 8.18.101 through 8.18.418 pertaining to the state electrical board	))))	NOTICE OF TRANSFER

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the State Electrical Board is transferred from the Department of Commerce to the Department of Labor and Industry, ARM Title 24, Chapter 141.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

OLD	NEW	
8.18.101	24.141.101	Board Organization
8.18.201	24.141.201	Procedural Rules
8.18.202	24.141.202	Public Participation
8.18.401	24.141.401	Board Meetings
8.18.402	24.141.501	Electrician Applications
8.18.404	24.141.502	Temporary Practice Permit
8.18.406	24.141.402	Apprentice Registration
8.18.407	24.141.405	Fee Schedule
8.18.408	24.141.503	Examinations
8.18.409	24.141.2102	Continuing Education
8.18.410	24.141.404	Pioneer Electrician Certificate
8.18.412	24.141.2401	Screening Panel
8.18.413	24.141.2402	Complaint Procedure
8.18.414	24.141.301	Definitions
8.18.415	24.141.403	Licensee Responsibilities
8.18.416	24.141.505	Electrical Contractor Licensing
8.18.417	24.141.504	Licensure By Reciprocity Or Endorsement
8.18.418	24.141.2101	Renewals

3. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

STATE ELECTRICAL BOARD
Ron VanDiest, Chairman

By: /s/ KEVIN BRAUN
Kevin Braun
RULE REVIEWER

By: /s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State, June 17, 2002.

**BEFORE THE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA**

In the matter of the transfer of ARM 8.48.101 through 8.48.1206 pertaining to the board of professional engineers and land surveyors) **NOTICE OF TRANSFER**

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Professional Engineers and Land Surveyors is transferred from the Department of Commerce to the Department of Labor and Industry, ARM Title 24, Chapter 183.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

OLD	NEW	
8.48.101	24.183.101	Board Organization
8.48.201	24.183.201	Procedural Rules
8.48.202	24.183.202	~~Citizen~~ Public Participation Rules
8.48.401	24.183.401	Board Elected Officers
8.48.403	24.183.402	Board Meetings
8.48.405	24.183.403	Board Seal
8.48.407	24.183.409	Affiliation With National Associations
8.48.408	24.183.2401	Screening Panel
8.48.501	24.183.501	Approval Of Schools
8.48.502	24.183.502	Applications
8.48.504	24.183.503	Application References
8.48.505	24.183.504	Disposal Of Applications
8.48.507	24.183.702	Classification Of Experience For Engineering Applicants
8.48.508	24.183.509	Examination Procedures
8.48.509	24.183.512	Application For Emeritus Status
8.48.511	24.183.2102	Inactive Status And Reactivation
8.48.601	24.183.701	Comity For Professional Engineers
8.48.604	24.183.801	Comity Consideration For Professional Land Surveyors
8.48.801	24.183.510	Grant And Issue Licenses
8.48.802	24.183.511	License Seal
8.48.901	24.183.2101	Expiration Of License - Renewal
8.48.903	24.183.2103	Late Renewal
8.48.904	24.183.2104	Expired Certificate - Renewal Grace Period
8.48.905	24.183.2105	Continuing Professional Competency - Continuing Education
8.48.1105	24.183.404	Fee Schedule

OLD	NEW	
8.48.1106	24.183.2402	Complaint Process
8.48.1109	24.183.1001	Form Of Corner Records - Information To Be Included
8.48.1111	24.183.302	Direct Supervision
8.48.1112	24.183.301	Definition Of Responsible Charge For Professional Engineers and Land Surveyors
8.48.1113	24.183.2206	Issuance Of Public Statements
8.48.1201A	24.183.2201	Introduction
8.48.1202	24.183.2202	Safety, Health, And Welfare Of The Public Paramount In The Performance Of Professional Duties
8.48.1203	24.183.2203	Performance Of Services Only In Areas Of Competence
8.48.1205	24.183.2204	Conflicts Of Interest
8.48.1206	24.183.2205	Avoidance Of Improper Solicitation Of Professional Employment

3. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
STEVE WRIGHT, CHAIRMAN

By: /s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, June 17, 2002.

**BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA**

In the matter of the adoption of new rules, the amendment of ARM 24.29.1504, 24.29.1517, 24.29.1531, 24.29.1536, 24.29.1571, and 24.29.1581, and the repeal of ARM 24.29.2004, all related to chiropractic, occupational therapy and physical therapy services and fees in workers' compensation matters	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On May 16, 2002, the Department of Labor and Industry published notice of the proposed adoption, amendment and repeal of the above-stated rules at page 1403 of the 2002 Montana Administrative Register, Issue Number 9.

2. On June 7, 2002, a public hearing on the proposed adoption, amendment and repeal of the above-stated rules was conducted in Helena, and members of the public spoke at the public hearing. In addition, written comments were received prior to the closing of the comment period on June 14, 2002.

3. The Department has thoroughly considered all of the comments made. The comments received, and the Department's response to each is as follows:

Comment 1: A commenter disagreed with a portion of the Department's general statement of reasonable necessity concerning the proposed rule changes, saying that the IAIABC's expected medical module for electronic reporting of medical information was not a sufficient reason for adopting the proposed changes.

Response 1: The Department acknowledges the commenter's statement and disagreement with that portion of the Department's reasoning. The Department notes that there were a number of reasons why the Department believes that proposed rule changes are reasonably necessary, and that the commenter did not take issue with those other reasons. The Department also notes that the commenter did not object to the text of any of the proposed rule changes. However, the Department, based on the consensus recommendations of the Task Force, believes that use of industry-standard coding and reporting is desirable from both a cost standpoint (for providers and insurers, and consequently, for employers) as well as providing a way to meaningfully compare Montana's workers' compensation system costs with the systems in other states. The Department believes that there is reasonable necessity for adopting this physical medicine fee

schedule whether or not the Department implements the IAIABC's medical module for electronic reporting of medical information.

Comment 2: A commenter stated that the proposed effective date of July 1, 2002, is unrealistic and suggested an effective date of December 31, 2002, or January 1, 2003.

Response 2: The Department has weighed considerations for and against a July 1, 2002, effective date. A reason "for" is based upon the arguments raised by the Montana chiropractic community, namely that the fees for services by doctors of chiropractic are too low, and have been too low for eight years. Another reason "for" is based upon the consensus formed by the Task Force members, which reached its consensus based on a summer 2002 adoption of these rules. A third reason "for" is based upon the desirability expressed by providers and payors of using standard procedure codes and nomenclature for physical medicine services.

The reason expressed "against" a July 1, 2002, effective date was that the commenter did not believe it was possible to adapt to changes in such a short order.

The Department concludes that the services covered by the proposed NEW RULES represent a relatively small proportion of medical services provided under Montana's workers' compensation system, and that because the change is towards using standard and commonly used procedure codes and descriptions, most providers and most payors will have relatively little difficulty converting. The Department also notes that the most immediate impact will be on the providers, who will begin using the new codes on July 1. Assuming that providers bill on a monthly basis, payors will not see new procedure codes until early August, and therefore will not be processing payments to providers immediately as of July 1. The Department, based in large part upon the Task Force's consensus recommendations, concludes that the system-wide benefits of a July 1, 2002, effective date outweigh the system-wide disadvantages predicted by the commenter.

Comment 3: Another commenter objected to the use of the "usual and customary" fee for service as providing the basis for payment for procedures that are not yet assigned a procedure code. The commenter appears to favor a rule that requires prior authorization from the insurer as to the treatment to be rendered and the fee that is paid for procedures that are not yet assigned a procedure code or a unit value.

Response 3: Section 39-71-704, MCA, generally sets as a standard that insurers must pay for reasonable medical care needed by workers' compensation claimants. If a new medical procedure is reasonablely needed by a claimant, the Department concludes that the insurer is liable for the cost of that service.

The Department concludes that changing the rule in the manner suggested by the commenter would affect the fee schedule for all non-hospital providers and not simply practitioners of physical medicine. As such, the suggested change would fall outside the notice provisions for this rule adoption. The Department notes that it is willing to consider the proposed change in a future rule amendment process providing proper notice to all affected parties.

Comment 4: A commenter suggested that NEW RULE IV(2) and NEW RULE V(2) specify the procedures or services not covered in the rules or listed as "BR" under NEW RULE I(10) and (11) and require prior authorization.

Response 4: The Department is aware of the concerns the commenter has raised and has amended the rules accordingly. The Department reiterates that insurers are obligated to provide reasonable medical services to claimants, as provided by 39-71-704, MCA. Where an insurer's prior authorization is required for a procedure, the insurer may not unreasonably withhold that authorization. The Department recommends that at the time a provider requests authorization from an insurer for performing a procedure that does not have an established numerical relative value, the provider and the insurer also discuss the amount of the fee to be charged the insurer for that procedure.

Comment 5: The Department commented at the public hearing that some of the dates in NEW RULE VI did not fall evenly in three month intervals, although that was its intent and the consensus recommendation of the Task Force to have adjustment determinations made in three month intervals, and any adjustments made effective at the beginning of a calendar quarter.

Response 5: The Department agrees with the comment and has amended the rule accordingly.

Comment 6: A commenter stated that a quarterly review and update of the conversion factors was too frequent, and suggested that updates occur not more than twice a year.

Response 6: The Department first notes that only conversion factors for services provided by chiropractors, physical therapists and occupational therapists are subject to the provisions of NEW RULE VI, which provides for special monitoring and adjustment over an 18 month period. According to the data used by the Department in making the proposed changes, services by chiropractors amounts to approximately 3.4% of the total annual medical payments made by insurers. Services performed by physical and occupational therapists account for approximately 3.3% of the total. Thus, only a very small percentage of total medical costs will fall into service areas which might be adjusted quarterly. The potential for adjustment only affects

the conversion factor, and does not change the CPT codes or the RVP relative values. The Department concludes that because only the dollar value of the conversion factor might change, there will be only minimal costs for payors to make any needed programing changes to computerized bill paying and tracking systems. The Department also notes that under the terms of NEW RULE VI, there is only the possibility of three additional quarterly adjustments, because conversion factors are normally adjusted as of January 1 each year.

The Department has concluded, based upon the consensus of the Task Force, that the only way to both provide an increase in the reimbursement amounts paid to chiropractors (the issue in contention) and observe the overall medical fee cost limits imposed by 39-71-704(4), MCA (2001), is to engage in the special monitoring and adjustment process. The Department believes that it has appropriately balanced those two potentially competing interests, but that it must be prepared to make the quarterly adjustments if needed to preserve that balance.

Comment 7: Several commenters spoke in favor of the proposed rule changes.

Response 7: The Department acknowledges those comments, and thanks the members of the Task Force for their efforts in making consensus recommendations that have broad support.

Comment 8: A commenter suggested that a cross reference in NEW RULE IV(2) and NEW RULE V(2) to the payment rate for CPT code 97750 in NEW RULE II(6) and NEW RULE III(6) would add clarity to the correct payment for code 97750.

Response 8: The Department agrees with these suggestions to provide greater clarity in the rules and has amended the rules accordingly.

Comment 9: A commenter suggested that procedure codes 99205 and 99215 be added to NEW RULE II(4)(d), and stated that chiropractors were capable of performing a diagnosis of "high complexity", and had been recognized as such via the former procedure codes of C9205 and C9215.

Response 9: The Department does not mean to suggest that chiropractors are not capable of making a diagnosis of high complexity. However, because the procedure codes are linked to a particular relative value, chiropractors are limited to billing only for certain procedure codes. As such, those restrictions essentially place a ceiling on the cost of evaluation and management services performed by chiropractic practitioners. Absent that cost ceiling on those particular procedures, the overall conversion factor for doctors of chiropractic would have to be reduced in order to maintain the level of costs required by 39-71-704(4), MCA (2001). The consensus recommendation of the Task Force was to eliminate

payment for certain procedure codes (thus establishing a ceiling on certain procedure costs) while making a modest increase in the fee for more routine services. Given the statutory constraints, the Department concludes it will not restore CPT codes 99205 and 99215 in NEW RULE II.

Comment 10: The same commenter suggested that the Department meet with "subluxation-based" chiropractors to learn how those providers differ from other providers of physical medicine services.

Response 10: The Department notes that the Workers' Compensation Act (Title 39, chapter 71, MCA) does not expressly recognize different forms of chiropractic practice or provide a basis for a separate fee structure for them. However, the Department is open to meeting with individuals or groups of providers at a mutually convenient time and place to listen to the concerns of those persons.

Comment 11: A commenter suggested that an existing term used in ARM 24.29.1517(4)(a), "consulting specialist", be defined in a way to make it clear that a physical therapist is not a "consulting specialist" within the meaning of the rule. The commenter cited instances where insurers, using ARM 24.29.1517(4)(a) as justification, have refused to pay for routine physical therapy services provided by physical therapists pursuant to the direction of the treating physician.

Response 11: The Department does not consider a physical therapist to be a "consulting specialist" within the meaning of ARM 24.29.1517(4)(a). As the commenter correctly points out, the Department's position from 1993 (when this rule was first adopted) has been that routine physical therapy services are not subject to prior authorization by the insurer. However, because (4)(a) was not proposed for amendment, the Department concludes that it cannot properly insert the requested clarification without first providing appropriate notice to the public. The Department will endeavor to reinforce its message that routine physical therapy services are not subject to prior approval through other forums, including direct insurer contact.

Comment 12: A commenter expressed substantial concerns about the Department's current requirements for submission of information to the Department's workers' compensation data base system, and predicted further difficulties if and when the Department adopts the IAIABC medical module.

Response 12: The Department notes that concerns expressed by the commenter regarding the operation of the Department's workers' compensation data base system are outside the scope of the proposed rule changes. However, in the interest of providing a response to the comment, the Department responds that it will solicit and consider public comment regarding submission of information to the data base system required by

39-71-225, MCA, before deciding whether the Department should implement more detailed medical reporting requirements. The Department will keep in mind the concerns raised by the commenter when data base system matters are being considered.

4. After consideration of the comments, the Department has adopted the following rules, exactly as proposed:

NEW RULE I (24.29.1532) USE OF FEE SCHEDULES FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2002

NEW RULE II (24.29.1572) CHIROPRACTIC FEES FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2002

NEW RULE III (24.29.1582) PROVIDER FEES--OCCUPATIONAL AND PHYSICAL THERAPY SPECIALTY AREA FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2002

5. After consideration of the comments, the Department has adopted the following rules as proposed, with the following changes (deleted material interlined, new material underlined):

NEW RULE IV (24.29.1573) PRIOR AUTHORIZATION AND BILLING LIMITATIONS FOR CHIROPRACTIC SERVICES PROVIDED ON OR AFTER JULY 1, 2002 (1) same as proposed.

(2) Prior authorization is required before performing the procedures identified by codes 97535, 97537, 97545, 97546, and 97750. Procedure code 97750 will be reimbursed at the rate specified in ARM 24.29.1572(6).

(a) New procedures, for which a CPT code does not yet exist, and those procedures for which a numerical relative value has not been established, require prior authorization from the insurer.

(3) through (12) same as proposed.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

NEW RULE V (24.29.1583) PRIOR AUTHORIZATION AND BILLING LIMITATIONS FOR SERVICES PROVIDED BY OCCUPATIONAL THERAPISTS AND PHYSICAL THERAPISTS ON OR AFTER JULY 1, 2002 (1) same as proposed.

(2) Prior authorization is required before performing the procedures identified by codes 97535, 97537, 97545, 97546, and 97750. Procedure code 97750 will be reimbursed at the rate specified in ARM 24.29.1582(6).

(a) New procedures, for which a CPT code does not yet exist, and those procedures for which a numerical relative value has not been established, require prior authorization from the insurer.

(3) through (11) same as proposed.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

NEW RULE VI (24.29.1537) SPECIAL MONITORING AND ADJUSTMENT

OF PHYSICAL MEDICINE FEES DURING THE PERIOD JULY 1, 2002 THROUGH DECEMBER 31, 2003 (1) During the period from July 1, 2002 through December 31, 2003, the physical medicine conversion factor will be adjusted on January 1, ~~March~~ April 1, ~~June~~ July 1, and ~~September~~ October 1, 2003, as needed to keep the average cost-per-visit for physical medicine services in line with expected costs. The expected average cost-per-visit amount for the July 1, 2002 through December 31, 2003, period has been determined using state compensation insurance fund data. State compensation insurance fund data will continue to be used to monitor the actual average cost-per-visit during the period.

(2) same as proposed.

(a) An adjustment to the conversion factor for the physical and occupational therapy specialties will be made on January 1, 2003, using the actual average cost-per-visit for the period of July 1, 2002, through September 30, 2002. A second adjustment may be made on ~~March~~ April 1, 2003, using the actual average cost-per-visit for the period of July 1, 2002, through December 31, 2002. Subsequent adjustments may be made every three months using three additional months of data to determine the actual average cost-per-visit. If the average cost-per-visit remains between $76.96 and $78.52 during 2002 and $76.96 and $78.52 (plus any percentage increase in the 2003 average weekly wage), then no adjustment will be made to the conversion factor. If an adjustment is necessary, the new conversion factor will be calculated by determining the actual average cost-per-visit for the period and dividing it by the conversion factor in effect for the period to arrive at the average RVP units per visit. Dividing the target average cost-per-visit by the average RVP units per visit determines the adjusted conversion factor.

(i) same as proposed.

(ii) As another example, if the actual average cost-per-visit for the period of January 1, 2003, through ~~October 31~~ September 30, 2003, remains between $76.96 and $78.52 (as increased by the percentage increase in the state's average weekly wage for 2003), then no additional adjustments will be made until January 1, 2004.

(b) same as proposed.

(3) same as proposed.

(a) An adjustment to the conversion factor for the chiropractic specialty area will be made on January 1, 2003 using the actual average cost-per-visit for the period of July 1, 2002 through September 30, 2002. A second adjustment may be made on ~~March~~ April 1, 2003, using the actual average cost-per-visit for the period of July 1, 2002, through December 31, 2002. Subsequent adjustments may be made every three months using three additional months of data to determine the actual average cost-per-visit. If the average cost-per-visit remains below $62.90 during 2002, or below $62.90 (plus the percentage increase in the 2003 average weekly wage) for 2003, then no adjustment will be made to the conversion factor. If an adjustment is necessary, the new conversion factor will be calculated by determining the actual average cost-per-visit for

the period and dividing it by the conversion factor in effect for the period to arrive at the average RVP units per visit. The percentage of the RVP units attributable to usage of the codes specified in (3) and all other CPT codes utilized during the period must then be determined. The percentage of the units other than those specified in (3) is multiplied by the average RVP units per visit and the product multiplied by the conversion factor in effect for those codes and subtracted from the target average cost-per-visit. The difference is then divided by the remaining average RVP units per visit attributable to the codes specified in (3). The quotient is the adjusted conversion factor.

(i) same as proposed.

(ii) As another example, if the actual average cost-per-visit remains below the target rate for the period of October 1, 2002 through ~~October 31~~ September 30, 2003, then no additional adjustments will be made until January 1, 2004.

(b) same as proposed.

(4) same as proposed.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

6. After consideration of the comments, the Department has amended the rules exactly as proposed.

7. After consideration of the comments, the Department has repealed ARM 24.29.2004 exactly as proposed.

8. The new rules, amendments, and repeal will be effective July 1, 2002.

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: June 17, 2002.

**BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA**

In the matter of the repeal of ARM 24.29.2803, 24.29.2814, and 24.29.2817, and the amendment of ARM 24.29.2811, pertaining to the Uninsured Employers' Fund	) NOTICE OF REPEAL) AND AMENDMENT)))))

TO: All Concerned Persons

1. On May 16, 2002, the Department of Labor and Industry published notice of the proposed repeal and amendment of the above-stated rules at page 1420 of the 2002 Montana Administrative Register, Issue Number 9.

2. No comments or testimony were received.

3. The Department has repealed and amended the rules exactly as proposed.

/s/ KEVIN BRAUN
Kevin Braun,
Rule Reviewer

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: June 17, 2002.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.40.301, 37.40.302, 37.40.307, 37.40.308, 37.40.311, 37.40.315, 37.40.320, 37.40.322, 37.40.326, 37.40.346 and 37.40.361 and the repeal of ARM 37.40.313, 37.40.314, 37.40.323 and 37.40.324 pertaining to nursing facilities	)))))))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Interested Persons

1. On April 25, 2002, the Department of Public Health and Human Services published notice of the proposed amendment and repeal of the above-stated rules at page 1262 of the 2002 Montana Administrative Register, issue number 8.

2. The Department has amended ARM 37.40.301, 37.40.302, 37.40.307, 37.40.308, 37.40.311, 37.40.315, 37.40.320, 37.40.322, 37.40.326, 37.40.346 and 37.40.361 and repealed ARM 37.40.313, 37.40.314, 37.40.323 and 37.40.324 as proposed.

3. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

COMMENT #1: We support the proposed rule as a final step to the transition to the price-based methodology for nursing facility reimbursement. We support the proposal that no nursing facility gets less than a 2% increase during the transition period to full price.

RESPONSE: The Department developed the price-based reimbursement system in conjunction with nursing home providers through the Medicaid Reimbursement Work Group with the goal of establishing a system of reimbursement that was less volatile and more predictable for the Department and the industry. The price-based system will reimburse facilities at a reasonable price for the provision of nursing facility services. The Department agreed that not reducing any provider's rate during the transition to the full price-based system was appropriate. However, emphasis has been placed on moving closer to actual price those facilities that have historically had lower Medicaid reimbursement rates.

COMMENT #2: A major factor that contributed to the historic volatility in the reimbursement system was a serious under funding of the nursing home program by the Legislature.

Transition to a price-based system will not solve the problem of under funding. Support for a price-based system is dependent on the underlying principle that the price is set at an amount that is fair and reasonable. We do not see the price-based system as a disconnect from the cost of care. Clearly, the price will have to have a rational basis and the cost of care provides that rational basis. Although nursing facilities will receive significantly higher rate increases than in prior years, the "price" resulting from this rule, about $106.00 per patient day, is still substantially below the actual cost of a day of care. However, facilities will receive additional lump sum payments through the Intergovernmental Transfer (IGT) program that will decrease the gap between rates and cost.

RESPONSE: The Legislature acknowledged the need for additional funding for nursing facilities by approving the Department's request for a 4.5% increase in funding for the 2002 through 2003 biennium for nursing facility reimbursement. Additional funds from the IGT program, which were also approved by the legislature, have been a substantial source of needed funds to insure that quality of care can continue to be provided in Montana's nursing facilities.

A comparison was prepared for the Department by Myers and Stauffer of the 2002 rates from the first year transition to the price-based system to the cost of nursing facility services utilizing fiscal year (FY) 2000 cost report information, inflated to the mid point of the 2002 rate year. This analysis indicates that once the IGT payments were factored in, the Medicaid day weighted average total rate was $112.87 as compared to the Medicaid inflated cost of $113.64 for FY 2002. A comparison of these two amounts would indicate that on average Medicaid is covering approximately 99.32% of the cost in the first year transition to the new price-based system of reimbursement. This analysis will be prepared for the FY 2003 rates as well and will serve as one of the benchmarks for the adequacy of the rates that are established through the price-based methodology.

Other factors that will be considered in the establishment of the price include the cost of providing nursing facility services, Medicaid recipients' access to nursing facility services, the quality of nursing facility care as well as budgetary or funding levels. The price-based rate will reflect a rate commensurate with the services that nursing facilities are required to provide by federal and state requirements. The FY 2003 average rate is $106.33 compared to the average for FY 2002 of $102.13 before taking into consideration the additional funds that will be provided through the IGT program to all facilities which will increase in FY 2003.

COMMENT #3: Rates are being set on FY 2002 patient days. Nursing home occupancy and Medicaid days have been declining for several years. We are concerned that patient days together with

the calculation of patient contribution, results in a 4.1% increase in average rate instead of a 4.5% increase in rates. We believe that additional funding is available to increase rates above what is being proposed. We ask that the Department review its estimates now and again prior to the end of FY 2003 to determine whether additional funding is available for distribution to nursing facilities. We support the distribution of the full 4.5% provider rate increase in fiscal year 2003.

RESPONSE: All of the funds appropriated by the legislature for nursing facility reimbursement in FY 2003 will be distributed through the reimbursement methodology. The Department on an ongoing basis monitors the bed day trends and the utilization projections for nursing facility providers. We believe that the days being utilized in the reimbursement model are appropriate and reflective of utilization projections for FY 2003.

The reimbursement calculation includes an amount that represents the contribution provided from patients toward the cost of nursing home care. This amount is in addition to the state and federal funding levels appropriated by the legislature. The patient contribution amounts do not historically increase at the same rate as funding levels appropriated by the legislature. When the patient contribution funding is included with the other funds, the aggregate percent increase will be calculated at less than the 4.5% level that the legislature appropriated for the state and federal share for the nursing home program. The Department will continue to monitor patient contribution, utilization patterns and funding for nursing facility providers during the course of fiscal year 2003 in order to evaluate if any adjustments are warranted in this program.

COMMENT #4: We support the change in the Medicaid cost report filing deadlines from 90 days to 150 days after a provider fiscal year end.

RESPONSE: The 90-day deadline for Medicaid cost report submission was appropriate when the information contained in the cost report was utilized for rate setting. The system of reimbursement is now price-based and the need for this cost reporting information within 90 days is no longer as crucial. Many providers found it difficult to provide accurate cost report information within the 90-day time frame due to the reliance on Medicare information that was necessary to file a cost report. This resulted in many providers requesting extensions in the filing deadlines to try to provide accurate cost report information. The Department will utilize the Medicare filing deadline of 150 days in order to ease the burden on providers and lessen the need for providers to request extensions to the filing deadlines under Medicaid.

COMMENT #5: We support the continuation of "at risk" payments to the county affiliated providers and to other nursing facility providers through the use of IGT.

RESPONSE: The Department agrees that the IGT program should continue to provide critical resources for "at risk" nursing facilities and to all other nursing facility providers in Montana, many who are struggling with occupancy, as well as, other financial constraints while trying to keep their doors open and continue to provide needed nursing home services in their communities.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State June 17, 2002.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.78.102, 37.78.206, 37.78.207, 37.78.208, 37.78.420, 37.78.425, 37.78.506, 37.78.807, 37.78.825, 37.78.826 and 37.82.101 pertaining to families achieving independence in Montana (FAIM) and temporary assistance for needy families (TANF)	)	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 25, 2002, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 1207 of the 2002 Montana Administrative Register, issue number 8.

2. The Department has amended rules 37.78.102, 37.78.206, 37.78.207, 37.78.208, 37.78.420, 37.78.425, 37.78.807, 37.78.825, 37.78.826 and 37.82.101 as proposed.

3. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

<u>37.78.506 TANF: TANF CASH ASSISTANCE; SANCTIONS</u> (1) If any member of the assistance unit fails or refuses without good cause as defined in ARM 37.78.508 to comply with an employment related or training activity as defined in (8) the participant will be sanctioned by means of the reduction of the monthly TANF cash assistance payment by an amount equal to one person's share of the payment for ~~1~~ <u>one</u> month. This rule does not apply to households who are receiving TANF extended benefits as defined in ARM 37.78.202. <u>The imposition of a sanction ends the currently negotiated FIA the last day of the penalty month. A sanction is considered imposed even if a fair hearing is requested and continued benefits are issued.</u>

(2) through (8) remain as proposed.

(9) If a sanctioned individual requests a hearing to challenge the sanction and receives continued benefits pending the hearing, the sanction will not be imposed until a final decision is obtained. If a final decision upholding the sanction is obtained, the assistance received during the penalty period ~~and the ineligibility period~~ pending the fair hearing will be considered an overpayment.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211, 53-4-601 and 53-4-608, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: It seems unfair to penalize a family that has come into compliance and renegotiated a new family investment agreement (FIA) by requiring overpayment for the penalty month and the ineligibility month.

RESPONSE: The Department considered the comment and concluded that requiring an overpayment for the ineligibility month would not provide sanctioned individuals with motivation for compliance and for renegotiating a FIA. Consequently, the Department is amending ARM 37.78.506 as suggested.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State June 17, 2002.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.82.701, 37.82.1106 and 37.82.1107 pertaining to medically needy family medicaid coverage	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 25, 2002, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 1279 of the 2002 Montana Administrative Register, issue number 8.

2. The Department has amended ARM 37.82.1106 and 37.82.1107 as proposed.

3. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.82.701 GROUPS COVERED, NON-INSTITUTIONALIZED FAMILIES AND CHILDREN (1) Medicaid will be provided to:

(a) remains as proposed.

(b) individuals who have been receiving assistance in the non-medically needy family medicaid program and whose assistance is terminated because of earned income ~~or because of the loss of earned income disregards~~. These individuals may continue to receive medicaid for any or all of the ~~6~~ 12 calendar months immediately following the month in which non-medically needy family medicaid is last received, providing:

(i) in cases where assistance was terminated due to earned income, a member of the assistance unit continues to be employed during the ~~6~~ 12 months; however, eligibility may continue even though no member of the assistance unit is employed if there was a good cause as defined in ARM 37.78.508 for the termination or loss of employment~~. There is no requirement that a member of the assistance unit be employed in cases where assistance was terminated due to the loss of earned income disregards~~;

(ii) through (k) remain as proposed.

(l) needy caretaker relatives as defined in ARM 37.78.103 who have in their care an individual under age 19 who is eligible for medicaid, and whose countable income does not exceed the state's ~~July 1996 AFDC standards increased by the consumer price index,~~ family medicaid standards as defined in the family medicaid manual, section 002;

(m) through (4) remain as proposed.

AUTH: Sec. 53-4-212 and 53-6-113, MCA
IMP: Sec. 53-4-231, 53-6-101, 53-6-131, and 53-6-134, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The Department cannot reduce extended Medicaid benefits to six months of coverage without a waiver from the federal government.

RESPONSE: The Department received guidance from the federal Centers for Medicare and Medicaid which indicates the comment is correct. The rule is amended accordingly until such time as a federal waiver is approved.

COMMENT #2: ARM 37.82.701(1) refers to the Consumer Price Index. It would be better if the rule referred to the family Medicaid standard as defined in the Family Medicaid manual Section 002 so that the references are consistent.

RESPONSE: The Department agrees. The rule is amended accordingly.

COMMENT #3: Extended Medicaid is supposed to be for people who are transitioning to work. An increase in an expense should not qualify people to receive extended Medicaid, but the rule as written would allow for such a result.

RESPONSE: The Department agrees. The rule is amended accordingly.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State June 17, 2002.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.85.212 and 37.86.205 pertaining to resource based relative value scale (RBRVS)	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 25, 2002, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 1247 of the 2002 Montana Administrative Register, issue number 8.

2. The Department has amended ARM 37.86.205 as proposed.

3. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.85.212 RESOURCE-BASED RELATIVE VALUE SCALE (RBRVS) REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) through (3) remain as proposed.

(4) The conversion factor used to determine the medicaid payment amount for the services covered by this rule for state fiscal year 2003 is:

(a) ~~$34.00~~ 32.93 for medical and surgical services, as specified in (2); and

(4)(b) through (7) remain the same.

(8) Except for physician administered drugs as provided in ARM 37.86.105(3), clinical, laboratory services and anesthesia services, if neither medicare nor medicaid sets RVUs, then reimbursement is by report.

(a) remains the same.

(b) For state fiscal year 2003, the "by-report" rate is ~~54%~~ 51% of the provider's usual and customary charges.

(9) through (14) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The Department has already made two or three cuts to Medicaid and additional cuts should not be imposed on providers.

RESPONSE: ARM 37.85.212(3) was amended in June 2001. The rule

was amended at that time to provide a 2.3% provider rate increase effective July 2001 and an additional 2.3% increase to be effective July 1, 2002. No budget cuts are proposed in this rule amendment. However, it is probable given the state of the budget that further reduction in reimbursement will be proposed soon.

COMMENT #2: The RVUs from some of the private insurances is $54.50 compared to the $32.93 as proposed by the Department. Providers won't even get $.50 on the dollar. Pretty soon the providers won't see Medicaid patients, and what does the Department expect the patients to do to receive care? There are already clinics in town that will not receive any new Medicaid patients. If the Department continues to cut provider payments, soon there will be a need for a whole new Department to provide care of the recipients. When providers refuse to provide health care, the Department will also then have to provide funds for the recipients to travel in order to receive care. Providers are only going to be willing to continue to provide care to Medicaid recipients for so long.

RESPONSE: It appears that the commentor means "conversion factor" rather than "RVU's" when the Department's conversion factor of $32.93 is compared to private insurances' conversion factors. No meaningful comparison can be made of conversion factors across payers, as many variables enter into the RBRVS calculations. The confusion has resulted in a misunderstanding by the commentors about their reimbursement. Those few codes that are paid as a percentage of charges will be paid 51% of submitted charges, as provided in this rule. With respect to the comment that pretty soon the providers won't see Medicaid patients, the Department understands that reductions in reimbursement are difficult for providers but notes again that the rule as it exists increases reimbursement to RBRVS providers. The proposed amendment does not eliminate this increase.

COMMENT #3: There must be some other methodology for the Department to look at to accomplish the budget cuts.

RESPONSE: Again, the commentor appears to believe that this rule amendment reduces reimbursement to RBRVS providers when the rule actually contains a 2.3% increase in the reimbursement for RBRVS providers which is not removed by this amendment. The confusion is understandable because of the complexity of the RBRVS method of setting fees. Changes in the conversion factor, up or down, do not necessarily indicate that reimbursement is going up or down. All fees are re-calibrated against each other every July 1, using the new relative values (RVUs) set by Medicare for the year. Some fees go up and some fees go down, and in the absence of a budget increase or decrease, the conversion factor is used to make sure that in the aggregate the newly changed fees, given the expected usage of each procedure code, will keep aggregate payments in the upcoming year

consistent with the budget. When an overall budget increase is figured into the process, as in this case, the conversion factor is used to make the overall expected payments, given the newly changed fees, come out in aggregate equal to the last year's budgeted figure PLUS the increase.

COMMENT #4: A meeting was held with some Department staff and a committee to review proposals was discussed. The providers and the Department should work together to accomplish the budget cuts rather than have the Department force it upon the providers. What is the status on this issue?

RESPONSE: The Department recognizes the importance of this issue. However, at times, emergency rules must be utilized and the urgency of the situation does not allow the Department to actively utilize committees as it normally would. The formation of such a committee is still under discussion.

COMMENT #5: A request to be placed on the interested party list was made three or four weeks ago at a meeting with Department staff, notice of this hearing was not received. Department staff had indicated that names would be placed on the interested party list.

RESPONSE: The Department staff showed the back of a rule amendment notice as an instruction on how to get added to the interested party list at the meeting. After a thorough investigation of the matter by the Department staff, it was determined that the name was not added to the interested party list as the individual did not contact the Office of Legal Affairs as instructed. When the individual did contact the Department for inclusion on the interested party list, he did not specify what rule areas he was interested in. As a result, the individual was sent a complete listing of the Department's rules to allow the individual to indicate his areas of interest. The individual has acknowledged that he received the listing, but has not returned it yet to be included on the interested party list.

COMMENT #6: There are instances of misuse of the Medicaid system, including the PASSPORT system. If the Department would address these misuses, the Department might have other ways to save money than taking it out of the provider's pockets.

RESPONSE: The Department addresses proper use of the Medicaid system with both clients and providers. Ongoing education for PASSPORT and other Medicaid clients is conducted through newsletters, handbooks and guides, educational phone calls to each new PASSPORT client, and community forums. In addition to education of clients, the Department has developed policies that attempt to minimize misuse of the Medicaid system and to ensure appropriate, efficient medical care for all clients. Additionally, the Department reviews use of Medicaid services both through the Surveillance and Utilization Review Unit and

through the Fraud Unit. Any funds paid out for identified instances of inappropriate or improper use of the system are recovered. The Department encourages providers to report any alleged incidents of misuse by clients or providers to the Fraud Unit for investigation. Reports can be made by contacting the Department of Public Health and Human Services, Quality Assurance Division, Surveillance Utilization and Review Section, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

COMMENT #7: The Department should form a committee to look at other options that are available rather than continuing to cut payments to providers.

RESPONSE: The Department regrets that the urgency of this budget crisis has required us to implement cost-saving measures very quickly, without the kind of community involvement that we normally obtain. Because the situation appears to be ongoing, the Department does intend to solicit ideas from both the providers and client communities on ways to restructure the Medicaid program to keep it within its appropriated fund level.

COMMENT #8: The rule notice stated the conversion factor would be updated to $34.00 and the by-report rate to 54%. But the rule testimony noted they would be updated to $32.93 and 51%, respectively. Please explain.

RESPONSE: The amendments to the conversion factor and by-report rate were initiated prior to the analysis being completed. While the Department included an estimated conversion factor in original rule notice, the final conversion factor was completed just prior to the public hearing, hence the change was announced at the public hearing. It is also being reflected in this final rule notice.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State June 17, 2002.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.86.805, 37.86.1807, 37.86.2105 and 37.86.2207 pertaining to medicaid reimbursement for primary care services	))))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 25, 2002, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 1251 of the 2002 Montana Administrative Register, issue number 8.

2. The Department has amended ARM 37.86.805, 37.86.1807, 37.86.2105 and 37.86.2207 as proposed.

3. No comments or testimony were received.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State June 17, 2002.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.86.1004 and 37.86.1006 pertaining to reimbursement methodology for source based relative value on dental services	))))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 25, 2002, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 1243 of the 2002 Montana Administrative Register, issue number 8.

2. The Department has amended ARM 37.86.1004 as proposed.

3. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.1006 DENTAL SERVICES, COVERED PROCEDURES

(1) through (3) remain as proposed.

(4) Coverage of denture services are subject to the following requirements and limitations:

(a) a denturist may provide initial immediate full prosthesis and initial immediate partial prosthesis only when prescribed by a dentist; and

(b) requests for full prosthesis must show the approximate date of the most recent extractions, and/or the age and type of the present prosthesis.

(5) Replacement of lost dentures is a covered service subject to the following requirements and limitations:

(a) the dentist or denturist must indicate "lost dentures" on the request for prior authorization for replacement;

(b) full dentures which are over 10 years old may be replaced when the treating dentist documents the need for replacement;

(c) partial dentures which are over five years old may be replaced with full dentures;

(d) dentures which are between five and 10 years old may be replaced when the treating dentist documents the need for replacement, but reimbursement is at the rate for duplicating (or jumping) the dentures;

(e) the limits on coverage of denture replacement may be exceeded when the designated review organization determines that the existing dentures are causing the recipient serious physical health problems; and

(f) replacement of a lost denture is limited to one replacement per recipient per lifetime.

(4) through (11) remain as proposed but are renumbered (6) through (13).

~~(12)~~ (14) Tooth colored crowns~~,~~ and bridges ~~and dentures (full, immediate and partial)~~ are not covered benefits of the medicaid program for individuals age 21 and over.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-113, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The elimination of dentures is a human rights issue that neglects the elderly population and affects dignity, well being and quality of life.

RESPONSE: The dental program, that serves adults age 21 and over, is an optional program for state Medicaid programs. Although Montana currently covers these procedures, the shortfall in the Medicaid budget requires that the state review all optional services in order to remain within the budget mandated by the 2001 legislature. Under federal regulation, dental services for adults age 21 and over are optional, meaning the Medicaid program does not have to cover adult dental services. The Department does not view this proposal as neglecting the elderly or being a human rights issue. However, based on the comments received, the Department has decided to reinstate coverage for medically necessary dentures until the Department has an opportunity to explore other options available to limit dental coverage without completely eliminating denture services. Consequently, the rule is amended accordingly.

COMMENT #2: Developmentally disabled individuals should have equal dental coverage to that which children have. They have no means to take care of themselves or the funds to cover dental services.

RESPONSE: Currently, the federal regulations only require that dental services be provided to individuals under the age of 21. While disabled adults do require more comprehensive care in the dental office, the Department cannot discriminate on the basis of disability.

COMMENT #3: The Department should limit preventative services.

RESPONSE: Following discussions with the dental advisory council, the Department determined that limiting preventative services will only require more advanced dental services at a later date. In addition, other states that have limited, or eliminated, their adult dental services have found that when adults are not covered for dental services, they often do not facilitate regular visits to the dentist for their children. The Department believes preventive care is extremely important

to prevent significantly more serious and costly dental problems in the future.

COMMENT #4: The elimination of dentures would create additional health problems that will be more costly to the Medicaid program. These health concerns include: poor nutrition, loss of control over gums and jaw, speech, digestive problems, temporary mandibular joint (TMJ) issues and decreased quality of life. In addition, the commentors noted that the non-coverage of dentures is in conflict with the Omnibus Budget and Reconciliation Act (OBRA) 1987 nursing home quality standards that require nursing home residents receive services to be maintained at the highest practical functioning of each resident.

RESPONSE: The Department cannot verify that other medical costs will increase due to the elimination of the denture, crown and bridge coverage.

The Department does realize that changes in the diet of Medicaid patients may occur due to the non-coverage of dentures.

Although the OBRA 1987 nursing home quality standards state "a nursing home is responsible to assist residents in achieving and maintaining their highest practicable well being and to provide equal access to quality of care for all residents in its care regardless of payment source", the regulation does not mandate that state Medicaid programs provide coverage of dentures for nursing home patients.

The Department agrees that the lack of dentures in Montana Medicaid recipients could contribute to poor nutrition; however, dental services are not required for an adult over the age of 21. However, based on the comments received, the Department has decided to reinstate coverage for medically necessary dentures until the Department has an opportunity to explore other options available to limit dental coverage without completely eliminating denture services. Consequently, the rule is amended accordingly.

COMMENT #5: The Department's proposal to limit dentures, tooth-colored crowns and bridges penalizes nursing home patients who sacrificed so much throughout their lives and deserve a dignified existence with basic care available. Other states have not advocated not providing dentures to the elderly.

RESPONSE: While Montana is not aware whether other states are "doing away" with dentures for senior citizens, most states do not cover dental services for adults over the age of 21. Under federal statute, dental services for adults age 21 and over are not required. See 42 USC 1396a. The Department was not proposing to take away denture services for nursing home patients; it was proposing to eliminate denture, tooth-colored crown and bridge coverage for ALL adults over the age of 20. However, based on the comments received, the Department has

decided to reinstate coverage for medically necessary dentures until the Department has an opportunity to explore other options available to limit dental coverage without completely eliminating denture services. Consequently, the rule is amended accordingly.

COMMENT #6: Medicaid is proposing to cut services that are not done by dentists due to low reimbursement rates and that the proposed rule could harm access due to the scarcity of dental providers, especially in the rural communities. Commentors also noted that proposal to eliminate denture coverage was discrimination against the denturist while at the same time the Department was negotiating with dentists for a fee increase.

RESPONSE: Montana Medicaid has roughly 75% of the licensed dentists enrolled in the Medicaid program. However, because the dentists are enrolled does not mean that they are actively accepting new Medicaid patients. The Department did not single out any provider group in proposing to eliminate denture coverage. The Department's proposal was meant to affect the least number of people while continuing to cover the most essential dental services to Medicaid eligibles over the age of 20. One group noted that the elimination of the services by the Department would affect many members of their group as many dentists provide denture, crown and bridge services to Medicaid recipients. The Department has no evidence indicating that access to dental care would be affected by this rule. However, the Department does note that because Montana is a rural state, some Montanans must drive great distances in order to access not only dental care, but also other types of medical care.

The Department did not negotiate with the dentists for a fee increase while eliminating denture coverage. The 2001 legislature authorized a $315,000 increase for state fiscal year (SFY) 2003 for services provided under the Medicaid dental program. The unpleasant work required for the Department to limit spending in order to stay within its appropriation came much later in time. It should be noted that the fee increase is currently on hold due to the ongoing budget concerns with the state general fund balance.

COMMENT #7: Prisoners at Deer Lodge are not affected one way or another. They will still get dentures and partials paid for by Medicaid.

RESPONSE: Medicaid does not cover individuals that are incarcerated.

The Department of Corrections is responsible for providing medical and dental care to incarcerated individuals. The Department has no control over the Department of Corrections' budget, nor over how it is spent.

COMMENT #8: Individuals who are in need of dentures get these

not only for health reasons, but also to better compete and qualify for jobs in the pursuit of employment.

RESPONSE: The Montana Medicaid program will continue to cover exams, x-rays, basic restorative and extractions for recipients over the age of 20. By continuing to cover these services, it is the hope that the Department will alleviate a cost shift to the emergency room for dental pain. In addition, the Department will continue to cover stainless steel crowns so that teeth can be restored rather than extracted. This will allow the individual to continue to pursue a job. Furthermore, based on the comments received, the Department has decided to reinstate coverage for medically necessary dentures until the Department has an opportunity to explore other options available to limit dental coverage without completely eliminating denture services. Consequently, the rule is amended accordingly.

COMMENT #9: People who are impacted by these changes and who will suffer the cuts are unable to come to the hearing to defend or protect themselves.

RESPONSE: Due to the current budget situation, the Department has been required to address the budget deficit very quickly. Still, the Department has complied with all regulations in regards to notifying the public and provider community of proposed changes to the Medicaid program.

COMMENT #10: Medicaid recipients are on a fixed income and are already absorbing the increase in the coinsurance for Medicaid while also dealing with the decrease in the food stamps.

RESPONSE: During the 2001 legislative session, the Medicaid program was budgeted an amount that at the time, seemed adequate to meet the needs of Medicaid recipients. However, given the increasing Medicaid caseload and the decreasing tax revenues, Medicaid expenditures have increased drastically more than was anticipated. With direction from the Governor's budget office, the Department has been instructed to keep costs within the appropriated budget. Because of this mandate, the Department has been in the position to cut covered benefits, decrease reimbursement to providers and increase coinsurance for the Medicaid recipients. However, based on the comments received, the Department has decided to reinstate coverage for medically necessary dentures until the Department has an opportunity to explore other options available to limit dental coverage without completely eliminating denture services. Consequently, the rule is amended accordingly.

COMMENT #11: The Department is overstepping their authority and the decision to cut dentures is best left to the legislature. They wonder if allowing DPHHS to make these cuts amounts to an illegal delegation of legislative authority to an executive branch agency.

RESPONSE: The Department is given the authority to manage the Medicaid programs and is required (as directed by the Office of Budget and Program Planning (OBPP)) to stay within the budget allotted by the 2001 Legislature. See 53-6-101 and 17-8-103, MCA.

COMMENT #12: The total cut with State and Federal amounts is 1.5 million dollars out of a 7.4 million dollar program and the pharmacy program is $80 million and they are only being reduced by $1 million.

RESPONSE: Those are the current budget projections for the Medicaid dental budget for SFY 2002. The cuts that are currently being proposed in the Medicaid pharmacy program are projected to save $1 million out of a current projected annual budget of $80 million. This reduction is in the form of reducing reimbursement to pharmacies from AWP (Average Wholesale Price) less 10% to AWP less 15%.

Due to the current budget situation, the Department continues to review all avenues to reduce expenditures in the Medicaid program. This latest proposal is what the Department determined would have the least impact on the provider community, while continuing to provide essential prescription coverage to the recipient.

COMMENT #13: Medicaid would only pay for a full set of dentures every 10 years; 5 years if the dentist documents the need.

RESPONSE: These are the current limits within the Medicaid program. However, they may be amended at a later time once the Department has an opportunity to further explore ways to limit expenditures for the Medicaid program.

COMMENT #14: It was noted that some find it absolutely unconscionable that a State agency would even consider such a discriminatory action against a segment of our society that is already economically stressed and dependent upon the government for essential health and other basic survival assistance.

RESPONSE: The proposal by the Department to eliminate dentures, tooth-colored crowns and bridges was not directed against any segment of the population. The proposal to eliminate these services was for Medicaid recipients age 21 and over. There is no legal requirement for the State Medicaid program to cover any dental services for persons over age 21. Consequently, the Department attempted to bring Medicaid expenditures within the appropriation by cutting some covered services of optional benefits, as well as by increasing cost-sharing, reducing administrative costs, and cutting provider reimbursement rates. The Department took these steps in order to prevent any particular segment of the population from having to bear the full brunt of the budget crisis. All of the changes that have resulted from efforts to deal with the budgetary shortfall have

been difficult for those affected. However, based on the comments received, the Department has decided to reinstate coverage for medically necessary dentures until the Department has an opportunity to explore other options available to limit dental coverage without completely eliminating denture services. Consequently, the rule is amended accordingly.

COMMENT #15: Suggestion was offered to change to a qualification structure, lessening fees and giving providers the option to waive charges on dentures instead. In addition, create an advisory council that consists of dentists, denturists and the elderly to devise more appropriate cuts. Commentors also asked what factors and impacts the Department considered in making these cuts.

RESPONSE: Currently, individuals must meet strict eligibility criteria in order to become eligible for Medicaid. The Department implemented a new reimbursement methodology in July 2001 to update dental fees to coincide with the charges filed by the Medicaid dental providers. The Department does not want to reduce the relative values for the dentures procedures as this methodology was used to set reimbursement rates on all dental procedures. A provider currently has the option of not accepting a patient as Medicaid and instead donating his/her time and services.

The Department has an informal advisory council that is comprised of general dentists, pediatric dentists and an oral surgeon that provide advice based on Department proposals to best manage the Medicaid dental program. The Department did not include a denturist because dentists also make dentures and are qualified to discuss the need of dentures. When the current proposal was discussed at a recent dental advisory meeting, no one was pleased with the Department's proposal. However, all members were aware of the budget problems that are occurring in the Medicaid program. The Department's proposal was designed to decrease the Department's budget with minimal impact on the provider and recipient community.

In studying ways to decrease costs to the dental program, the Department determined that the elimination of the entire dental program for recipients over the age of 20 would only cost shift dental expenses to the emergency room and physician settings. The Department felt that although eliminating the crowns, bridges and dentures was a difficult option, the Department may not overspend its budget. However, based on the comments received, the Department has decided to reinstate coverage for medically necessary dentures until the Department has an opportunity to explore other options available to limit dental coverage without completely eliminating denture services. Consequently, the rule is amended accordingly. The dental advisory council will be convened and will determine limits that can be placed on the denture coverage to curtail denture costs.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State June 17, 2002.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.86.1101 and 37.86.1105 pertaining to medicaid outpatient drug reimbursement	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 25, 2002, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 1257 of the 2002 Montana Administrative Register, issue number 8.

2. The Department has amended ARM 37.86.1101 as proposed.

3. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

<u>37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT</u> (1) remains as proposed.

(2) The dispensing fee for filling prescriptions shall be determined for each pharmacy provider annually.

(a) remains as proposed.

(b) The dispensing fees assigned shall range between a minimum of $2.00 and a maximum of ~~$4.35~~ <u>$4.70</u>.

(c) and (d) remain as proposed.

(3) In-state pharmacy providers that are new to the Montana medicaid program will be assigned an interim $3.50 dispensing fee until a dispensing fee questionnaire, as provided in (2) above, can be completed for ~~6~~ <u>six</u> months of operation. At that time, a new dispensing fee will be assigned which will be the lower of the dispensing fee calculated in accordance with (2) for the pharmacy or the ~~$4.35~~ <u>$4.70</u> dispensing fee. Failure to comply with the ~~6~~ <u>six</u> months dispensing fee questionnaire requirement will result in assignment of a dispensing fee of $2.00.

(4) through (5)(b) remain as proposed.

AUTH: Sec. 53-2-201 and <u>53-6-113</u>, MCA
IMP: Sec. 53-6-101, <u>53-6-113</u> and 53-6-141, MCA

4. The Department has reviewed and considered the comments regarding the proposed change in the maximum dispensing fee. In response to comments received, the Department has decided to change the proposed increase to the dispensing fee. Whereas the Department planned to raise the maximum dispensing fee from $4.20 to $4.35, the Department agrees that the increase is too minimal to account for the cost of dispensing a

prescription. Providers strenuously objected to the notion that an increase of only $.15 would make the change to reimbursement more "palatable". Providers also regarded the insignificant increase as offensive, especially in light of dispensing fees in surrounding states. Upon further research, the Department has found that although the national average dispensing fee is $4.35, the average fee in surrounding states is much higher. Dispensing fees in Washington, Idaho, Wyoming, North Dakota and South Dakota average $4.67 (this average excludes Oregon because their dispensing fee of $3.50 is significantly lower than Montana's current fee). Therefore, the Department proposes to increase the maximum dispensing fee by $.50, which results in a maximum fee of $4.70. This change will more appropriately align Montana with surrounding states as well as recognize the cost to dispense a prescription. Additionally, the Department plans to undertake other significant cost containment measures that will require cooperation from pharmacy providers. The Department feels it is important to accurately compensate providers for the services they provide, especially when cost containment measures are enacted that may require additional assistance and time. Therefore, the Department feels the investment towards pharmacist's reimbursement is well worth the additional cost.

5. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

COMMENT #1: The change to reimbursement will negatively affect all pharmacies, particularly independent, rural pharmacies. Concern was expressed about the potential impact to rural communities if pharmacies are forced out of business. Another person argued that the Office Of Inspector General (OIG) study has serious flaws and should not be considered as a basis for changes. This individual feels the change to reimbursement will negatively affect rural communities by forcing pharmacies out of business because Medicaid clients comprise nearly 40% of most pharmacies' business.

RESPONSE: The Department has considered the impact this change will have on all pharmacies in Montana, including rural pharmacies. However, the OIG Report included rural pharmacies in the study and the OIG believes that the sample design took into account the number of chain pharmacies and the number of independent pharmacies in the State and appropriately weighed the sample results.

COMMENT #2: The validity of the estimate of Average Wholesale Price (AWP) is questioned. The provider indicates he is unable to purchase drugs at the proposed levels.

RESPONSE: The Department understands that not all pharmacies may be able to purchase drugs at AWP less 15%, however, when considering all pharmacies as an aggregate, the Department is heeding the recommendation of the OIG to more accurately reflect

acquisition cost.

COMMENT #3: The Department is asking pharmacy providers to sell their merchandise at cost and subsidize the Medicaid reductions with sales on other products.

RESPONSE: The Department has no intention to force providers to subsidize Medicaid reductions with sales of other products. The Department can only be concerned about the actual acquisition cost for drugs.

COMMENT #4: The increased demand for services should result in a corresponding increase in reimbursement for providers.

RESPONSE: The Department understands that increased utilization of services requires more work for Medicaid providers. As noted above, the Department has reconsidered the increase to the dispensing fee and has approved a new maximum of $4.70.

COMMENT #5: Recipients who require expensive medications may cause the Department's budget challenges.

RESPONSE: There is no doubt that a smaller percentage of utilizing members cause the largest percentage of expenditures. However, generally, high utilizers are often most in need of medical services, including drugs. It is important to note that Medicaid exists to help serve not only the financially needy, but also the medically needy who truly have expensive health care needs. Additionally, the Department is continually striving to monitor and control high utilizers by recommending alternative and less expensive courses of treatment.

COMMENT #6: All Medicaid agencies should be subject to salary reductions to offset the budget deficit.

RESPONSE: The Department has made internal reductions in order to contain costs. Those reductions have included elimination of travel and equipment and leaving vacant positions unfilled for a period of time to restore vacancy savings. This requires consolidation of duties and requires existing staff to shoulder more of the workload at a time when administrative requirements have increased due to the demands of implementing cost containment measures.

COMMENT #7: Pharmacy providers have not had a raise in reimbursement in over ten years.

RESPONSE: The Department has increased dispensing fees twice in the last ten years: once in July 1997 when the fee increased to $4.14 and again in July 1998 when the fee increased to $4.20.

COMMENT #8: The reduction of 5% will negatively impact the discount already in place by distributors and wholesalers.

RESPONSE: The Department cannot comment on the discounts that each pharmacy may receive from their individual wholesaler or supplier because those discounts vary. The Department can only control the discount taken off the AWP.

COMMENT #9: The $.15 increase in dispensing fee is not enough to make up for the loss imposed by the change to AWP. The Department should raise the dispensing fee to the average fee found in the Northwest ($4.68). Additionally, an incentive should be provided to pharmacies for generic dispensing by paying a higher dispensing fee for generic drugs.

RESPONSE: The Department has studied the matter and has adjusted the dispensing fee as addressed in paragraph 4 of this notice.

COMMENT #10: The Department should re-evaluate who the reduction is targeted towards; pharmacists are not the reason for increased drug costs. Drug prices are falsely blamed for much of the increase in health care expenditures. However, the real reason for increase in drug expenditures is a result of the new and expensive drugs used to treat chronic diseases and the reduction in the industries' AWP. Neither of these factors can be controlled by retail or home infusion pharmacies.

RESPONSE: The Department understands that high drug costs are not the fault of pharmacies, however, only the federal government has the power to regulate the cost of drugs. The Department continues to do all we can to contain costs, including prior authorization, drug utilization review, mandatory generic substitution, tab splitting and coverage of less expensive over-the-counter drugs. Additionally, the Department continues to explore other cost saving measures to be implemented in the near future.

COMMENT #11: The profit margins for most pharmacies are only 1/3 of 1%, and that will be worsened by the Medicaid reductions. Acquisition costs of the newer, expensive drugs and highly utilized drugs are generally very high and profit margins are very low because reimbursement by insurers is low; another cut to reimbursement will cause reimbursement to be significantly below acquisition cost.

RESPONSE: The Department understands that profit margins are low for pharmacy providers just as they are for other kinds of healthcare providers. The Department would argue that we are not changing reimbursement to below cost for pharmacies; we are only trying to bring reimbursement more in line with actual acquisition costs.

COMMENT #12: It does not make sense for the Department to reduce payments to pharmacy providers because the savings the Department will gain are automatically eliminated when considering all of the factors in provider reimbursement

(federal matching dollars, state income taxes, etc).

RESPONSE: In light of the OIG study, the Department is only concerned about accurately reimbursing pharmacists based on actual acquisition cost. Although revenue is an important part of the budget equation, the Department does not have the ability to collect revenue (beyond funds we already collect from manufacturers for drug rebates).

COMMENT #13: The Department should focus on the cost of drugs or amounts of drugs utilized in order to gain cost savings.

RESPONSE: The Department is pursuing a cost containment measure to help control high utilizing clients, who typically contribute to the high expenditures in the drug program. The Department plans to implement an intensive case management model whereby we can help control drug utilization for those clients who are receiving more drugs than necessary as well as recommend (in consultation with their physician and pharmacist) less costly alternatives.

COMMENT #14: This reduction will only create more hardship for the uninsured population that is already in a difficult position.

RESPONSE: Although the Department has an interest in the overall health of all of Montana's citizens, Medicaid has an obligation to control costs for our own clients. Therefore, the Department can only try to impact those clients who are insured by Medicaid.

COMMENT #15: The Department should focus on the pharmaceutical manufacturers to cut costs, rather than providers.

RESPONSE: This comment was already addressed in Response to Comment #10. However, even though a few other states have recently pursued the development of Medicaid preferred drug lists and supplemental rebates from manufacturers, their experiences have been mired in legal controversy. At this time, the State of Montana is not willing to pursue supplemental rebates as another way to generate revenue because we are certain the State would need to spend more in legal fees trying to defend the plan than we would make in cost savings.

COMMENT #16: Strenuous objections were made to the use of the OIG reports by the Department because there are too many problems with the report including the age of the report, the small number of sample pharmacies and the urban slant on the report.

RESPONSE: As noted in a previous response and in the Department's testimony, we recognize that some entities have criticized the OIG investigation as being flawed. We agree that the OIG failed to account for the cost of professional services

and the cost of dispensing which includes supplies and staff. However, because there has not been an auditable counter-study conducted, we must base our decisions on the information provided. Because Medicaid is a public insurance benefit and is funded by both federal and state monies, one can understand how important it is that we heed the recommendations made by the OIG.

COMMENT #17: Some pharmacies indicate that the reimbursement for certain drugs are actually lower than the acquisition cost, particularly products by Pfizer and Abbott.

RESPONSE: The Department understands that pharmacies have been reimbursed below their cost for a select number of drugs made by Pfizer and Abbott. The reason for the underpayment is because selected drugs have continued to be reimbursed at direct price, when in fact direct prices are not available for the majority of pharmacies in the state, that is, pharmaceutical companies are not selling these drugs to pharmacies in Montana at the direct price. ARM 37.86.1101(1)(b) currently provides that if the direct price is not available to providers in the state, the estimated acquisition cost (EAC), on which reimbursement may be based, will be the AWP minus the discount specified in the rule. Thus, at the present time the EAC used to calculate reimbursement should be based on the AWP rather than the direct price.

For that reason, the Department has eliminated direct pricing from the reimbursement methodology effective June 5, 2002. This change will enable pharmacies to be paid at the lower of the EAC, Federal Maximum Allowable Cost (FMAC), or their usual and customary charge. Subsection (1)(a) of ARM 37.86.1101, which defines the EAC as the direct cost, is being left in the rule because the direct price may be available to pharmacies in the state at some time in the future. The Department regrets not being able to change the reimbursement methodology sooner and will allow providers who have been paid incorrectly in the past year to reverse and resubmit those claims which were previously subjected to direct pricing.

COMMENT #18: There was a time when few pharmacies participated as Medicaid providers. This reduction will again force many pharmacies to withdraw from the Medicaid system.

RESPONSE: The Department feels it is important to emphasize that we do not intend to alienate providers. The Department understands that reductions in reimbursement rates may be difficult for Medicaid providers. However, the Department does not expect the reduction in reimbursement to result in a significant impact on access to pharmacy services.

COMMENT #19: Limits should be placed on the number of people enrolled in Medicaid. Eligibility requirements should be changed, particularly so people moving from other states cannot

immediately qualify for Medicaid.

RESPONSE: In an effort to control costs throughout Medicaid, the Department will continue to examine eligibility requirements and determinations to determine who should most appropriately qualify for benefits. Additionally, the Department does undertake efforts to ensure those utilizing their health benefits are not abusing the benefits. One way the Department pursues stricter control of Medicaid individuals' care seeking is through the Restricted Card Program. Under the Restricted Card Program, Medicaid individuals who overuse the program are restricted to one physician and one pharmacy and action is taken to limit the number of unnecessary emergency room visits. If further actions are required, the Medicaid Fraud Control Unit is notified and the situation is pursued by the Department of Justice. Federal law does not permit waiting periods for medicaid recipients establishing state residency.

COMMENT #20: The number of prescriptions a person can receive in a given month should be limited.

RESPONSE: Although some states have effectively instituted script limits for their Medicaid clients, Montana Medicaid is choosing to examine a more proactive approach at this time. In the near future, the Department plans to implement an intensive case management system for high utilizing clients so we can better monitor and control drug usage. Often, there is a clinical need for a client to have more than the average number of scripts so the Department believes script limits may be more punitive than necessary. However, the Department feels that the changes to cost sharing, effective April 1, 2002, have provided incentive to clients to make informed health care choices, including how many drugs they really need.

COMMENT #21: The Department should change the cost sharing requirements so the first two prescriptions would require a 5% coinsurance. The next three prescriptions would require a 33% coinsurance and the next three would be 66%. After six prescriptions, the client would be required to pay the entire amount of the prescription.

RESPONSE: The suggestion to model cost sharing in Medicaid after a private insurance plan is a good idea. However, because Medicaid is a joint federal and state funded program, we are obligated to abide by strict regulations regarding cost sharing. Within the current Code of Federal Regulations, states may only impose cost sharing requirements up to a certain limit (5% is the maximum coinsurance amount). Therefore, we are unable to impose greater coinsurance amounts at this time.

COMMENT #22: Prescription amounts should be limited to only a 30-day supply.

RESPONSE: The Department has examined and plans to implement a

change to the day supply in the near future. We agree that because eligibility is determined monthly, it makes the most sense to limit prescriptions to only a 30-day supply.

COMMENT #23: Time limits should be placed on expensive medications, like Prilosec. After 90 days of therapy, a less expensive generic medication should be dispensed.

RESPONSE: In the next couple of months, the Department plans to implement a step therapy program for one expensive class of drugs, Proton Pump Inhibitors (PPIs). This step therapy will allow the Department to realize cost savings at the same time we will be better controlling the drug regimens of the large number of people taking those expensive medications. Additionally, the Department already requires prior authorization on a number of expensive medications and the mandatory generic substitution program requires prescribers and pharmacies to prescribe and dispense a generic form of a drug, whenever possible.

COMMENT #24: Initial prescriptions for expensive medications (particularly mental health drugs) should be limited in order to avoid expensive waste because of when a client must change dosages or strengths.

RESPONSE: The Department is also investigating the idea of limiting the day supply on certain classes of drugs, particularly mental health drugs. The Department hopes that by requiring smaller day supplies on drugs for which the strength often changes, we can realize cost savings and prevent waste of unused medications.

COMMENT #25: More strenuous education should be provided for physicians so they better understand how to save money, and physicians who do not cooperate should be dropped from Medicaid.

RESPONSE: The Department agrees that physician education is a key component to help contain costs in the pharmacy program. Although the Department does not have the authority to terminate a Medicaid provider based on their prescribing habits, the Department can target those providers and demand (by way of audits and information) changes in behavior.

COMMENT #26: Mandatory generic dispensing should be enacted and physicians should not be allowed to write "Dispense As Written" on a prescription.

RESPONSE: The Department has already instituted mandatory generic substitution (effective June 2001). However, physicians will always have the ability to indicate Dispense As Written and the Department can only control that dynamic by requiring prior authorization before Medicaid will pay for a brand name drug.

COMMENT #27: Direct-to-consumer advertising should be banned in the State of Montana because recipients are using that

information to demand unneeded drugs.

RESPONSE: The Department has no control over direct-to-consumer advertising in the State of Montana.

COMMENT #28: The Governor and the Governor's Budget Office do not understand the value of pharmacy in the total health care picture. These reductions may result in immediate savings but will not result in long term solutions.

RESPONSE: Although the Department cannot comment on the position of the Governor or her Budget Office, the Department does understand the positive impact pharmacotherapy has on the overall well being of any individual. Although optional under the federal requirements, Montana Medicaid has chosen to provide a pharmacy benefit because we recognize the benefit to all Medicaid recipients. Furthermore, the Department believes that we can achieve long term savings from the proposed changes to reimbursement and other program areas.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State June 17, 2002.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- **Department of Agriculture;**
- **Department of Commerce;**
- **Department of Labor and Industry;**
- **Department of Livestock;**
- **Department of Public Service Regulation; and**
- **Office of the State Auditor and Insurance Commissioner.**

Education and Local Government Interim Committee:

- **State Board of Education;**
- **Board of Public Education;**
- **Board of Regents of Higher Education; and**
- **Office of Public Instruction.**

Children, Families, Health, and Human Services Interim Committee:

- **Department of Public Health and Human Services.**

Law and Justice Interim Committee:

- **Department of Corrections; and**
- **Department of Justice.**

Revenue and Transportation Interim Committee:

- **Department of Revenue; and**
- **Department of Transportation.**

State Administration, and Veterans' Affairs Interim Committee:

- **Department of Administration;**
- **Department of Military Affairs; and**
- **Office of the Secretary of State.**

Environmental Quality Council:

- **Department of Environmental Quality;**
- **Department of Fish, Wildlife, and Parks; and**
- **Department of Natural Resources and Conservation.**

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.**

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject	**1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.**
Statute Number and Department	**2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.**

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2002. This table includes those rules adopted during the period April 1, 2002 through June 30, 2002 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2002, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 2001 and 2002 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in May 2002, appear. Vacancies scheduled to appear from July 1, 2002, through September 30, 2002, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of June 7, 2002.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM MAY 2002

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Nursing Home Administrators (Labor and Industry)			
Ms. Carla Neiman	Governor	Richards	5/28/2002
Plains			5/28/2007
Qualifications (if required): representative of an institution concerned with the care of aged patients			
Board of Plumbers (Labor and Industry)			
Mr. Jerry Lyford	Governor	reappointed	5/21/2002
Kalispell			5/4/2006
Qualifications (if required): master plumber			
Mr. Terry Tatchell	Governor	reappointed	5/21/2002
Helena			5/4/2006
Qualifications (if required): journeyman plumber			
Board of Real Estate Appraisers (Labor and Industry)			
Mr. Donald Andrews	Governor	reappointed	5/1/2002
Ronan			5/1/2005
Qualifications (if required): real estate appraiser			
Mr. Thomas C. Moss	Governor	reappointed	5/1/2002
Billings			5/1/2005
Qualifications (if required): real estate appraiser			
Board of Realty Regulation (Labor and Industry)			
Mr. Terry Hilgendorf	Governor	not listed	5/13/2002
Great Falls			5/9/2006
Qualifications (if required): public member and a Republican			
Disability Advisory Council (Administration)			
Ms. Katherine Kountz	Governor	Helland	5/7/2002
Helena			11/14/2002
Qualifications (if required): ex-officio member			

BOARD AND COUNCIL APPOINTEES FROM MAY 2002

Appointee	Appointed by	Succeeds	Appointment/End Date
Governor's Income Tax Advisory Council (Revenue)			
Mr. Kurt Alme Helena Qualifications (if required): representative of the Governor's Office	Governor	not listed	5/8/2002 12/31/2002
Mr. Tim Bartz Helena Qualifications (if required): accountant	Governor	not listed	5/8/2002 12/31/2002
Mr. Leo Berry Helena Qualifications (if required): representing Association of Montana Retired Public Employees	Governor	not listed	5/8/2002 12/31/2002
Sen. Bob DePratu Whitefish Qualifications (if required): legislator	Governor	not listed	5/8/2002 12/31/2002
Mr. Jerry Driscoll Helena Qualifications (if required): representing AFL-CIO	Governor	not listed	5/8/2002 12/31/2002
Rep. Chase Hibbard Helena Qualifications (if required): representing Montana Taxpayers Association	Governor	not listed	5/8/2002 12/31/2002
Mr. Lary Johnson Kalispell Qualifications (if required): accountant	Governor	not listed	5/8/2002 12/31/2002
Mr. Jon Marchi Polson Qualifications (if required): representing Montana Ambassadors	Governor	not listed	5/8/2002 12/31/2002

BOARD AND COUNCIL APPOINTEES FROM MAY 2002

Appointee	Appointed by	Succeeds	Appointment/End Date
Governor's Income Tax Advisory Council (Revenue) cont.			
Mr. Scott Mendenhall Whitehall Qualifications (if required): representing Jefferson County Local Development Corporation	Governor	not listed	5/8/2002 12/31/2002
Ms. Karen Olson Sidney Qualifications (if required): representing Chamber of Commerce	Governor	not listed	5/8/2002 12/31/2002
Rep. Trudi Schmidt Great Falls Qualifications (if required): legislator	Governor	not listed	5/8/2002 12/31/2002
Sen. Jon Tester Big Sandy Qualifications (if required): legislator	Governor	not listed	5/8/2002 12/31/2002
Rep. Karl A. Waitschies Peerless Qualifications (if required): legislator	Governor	not listed	5/8/2002 12/31/2002
Mr. Doug Young Bozeman Qualifications (if required): academic	Governor	not listed	5/8/2002 12/31/2002
Governor's Local Option Tourist Tax Advisory Council (Revenue)			
Ms. Marti Bara Helena Qualifications (if required): representing Montana Innkeepers Association	Governor	not listed	5/8/2002 12/31/2002

BOARD AND COUNCIL APPOINTEES FROM MAY 2002

Appointee	Appointed by	Succeeds	Appointment/End Date
Governor's Local Option Tourist Tax Advisory Council (Revenue) cont.			
Mr. Evan Barrett Butte Qualifications (if required): representing Butte Local Development Corporation	Governor	not listed	5/8/2002 12/31/2002
Mayor Larry J. Bonderud Shelby Qualifications (if required): representing local government - city	Governor	not listed	5/8/2002 12/31/2002
Commissioner Carol Brooker Plains Qualifications (if required): representing local government - county	Governor	not listed	5/8/2002 12/31/2002
Sen. Jon Ellingson Missoula Qualifications (if required): legislator	Governor	not listed	5/8/2002 12/31/2002
Rep. Bob Gilbert Sidney Qualifications (if required): representing Rosebud County	Governor	not listed	5/8/2002 12/31/2002
Sen. William E. (Bill) Glaser Huntley Qualifications (if required): legislator	Governor	not listed	5/8/2002 12/31/2002
Mr. Don Hofmann Ismay Qualifications (if required): representing Montana Farm Bureau Federation	Governor	not listed	5/8/2002 12/31/2002
Mr. John Lawton Great Falls Qualifications (if required): representing local government - city	Governor	not listed	5/8/2002 12/31/2002

BOARD AND COUNCIL APPOINTEES FROM MAY 2002

Appointee	Appointed by	Succeeds	Appointment/End Date
Governor's Local Option Tourist Tax Advisory Council (Revenue) cont.			
Rep. Ralph Lenhart Glendive Qualifications (if required): legislator	Governor	not listed	5/8/2002 12/31/2002
Ms. Betty T. Lund Hamilton Qualifications (if required): representing local government - county	Governor	not listed	5/8/2002 12/31/2002
Rep. Joe McKenney Great Falls Qualifications (if required): legislator	Governor	not listed	5/8/2002 12/31/2002
Mr. Steve Snezek Helena Qualifications (if required): Governor's Office representative	Governor	not listed	5/8/2002 12/31/2002
Governor's Tourist Tax Advisory Council (Revenue)			
Mr. Webb Brown Helena Qualifications (if required): representing Chamber of Commerce	Governor	not listed	5/8/2002 12/31/2002
Rep. Ron Devlin Terry Qualifications (if required): legislator	Governor	not listed	5/8/2002 12/31/2002
Mr. Dale Duff Whitefish Qualifications (if required): representing Rocky Mountain Transportation Inc.	Governor	not listed	5/8/2002 12/31/2002
Rep. Ron Erickson Missoula Qualifications (if required): legislator	Governor	not listed	5/8/2002 12/31/2002

BOARD AND COUNCIL APPOINTEES FROM MAY 2002

Appointee	Appointed by	Succeeds	Appointment/End Date
Governor's Tourist Tax Advisory Council (Revenue) cont.			
Mr. Bob Fletcher Bozeman Qualifications (if required): representing Montana Tavern Association	Governor	not listed	5/8/2002 12/31/2002
Mr. Kelly Flynn Townsend Qualifications (if required): representing Montana Outfitters and Guides	Governor	not listed	5/8/2002 12/31/2002
Mr. Dean Harman Bainville Qualifications (if required): representing local government - county	Governor	not listed	5/8/2002 12/31/2002
Mr. Bill Howell West Yellowstone Qualifications (if required): representing Montana Restaurant Association	Governor	not listed	5/8/2002 12/31/2002
Ms. Nancy Schlepp Bozeman Qualifications (if required): representing Montana Farm Bureau Federation	Governor	not listed	5/8/2002 12/31/2002
Mr. Don Serba Missoula Qualifications (if required): representing Pulp and Paperworks Resource Council	Governor	not listed	5/8/2002 12/31/2002
Sen. Emily Stonington Bozeman Qualifications (if required): legislator	Governor	not listed	5/8/2002 12/31/2002
Rep. Robert R. Story, Jr. Park City Qualifications (if required): legislator	Governor	not listed	5/8/2002 12/31/2002

BOARD AND COUNCIL APPOINTEES FROM MAY 2002

Appointee	Appointed by	Succeeds	Appointment/End Date
Governor's Tourist Tax Advisory Council (Revenue) cont.			
Mr. Dennis M. Taylor	Governor	not listed	5/8/2002
Billings			12/31/2002
Qualifications (if required): representing local government - city			
Ms. Mary Whittinghill	Governor	not listed	5/8/2002
Helena			12/31/2002
Qualifications (if required): representing Montana Taxpayers Association			
Mr. George Willett	Governor	not listed	5/20/2002
Neihart			12/31/2002
Qualifications (if required): public member			
Montana Arts Council (Montana Arts Council)			
Ms. Kari Knierim	Governor	Smrcka	5/28/2002
Glasgow			2/1/2005
Qualifications (if required): public member			
Montana Heritage Preservation and Development Commission (Historical Society)			
Ms. Maureen Averill	Governor	reappointed	5/23/2002
Bigfork			5/23/2005
Qualifications (if required): member of the Tourism Advisory Council			
Mr. Brian Cockhill	Governor	Safford	5/23/2002
Helena			5/23/2005
Qualifications (if required): Montana historian			
Rep. Jeanette S. McKee	Governor	reappointed	5/23/2002
Hamilton			5/23/2005
Qualifications (if required): experienced in historic preservation			

BOARD AND COUNCIL APPOINTEES FROM MAY 2002

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Potato Advisory Committee (Agriculture)			
Mr. Bill Buyan Sheridan Qualifications (if required): none specified	Director	not listed	5/20/2002 5/20/2003
Mr. Dan Lake Ronan Qualifications (if required): none specified	Director	not listed	5/20/2002 5/20/2005
Mr. Art Mangels Dillon Qualifications (if required): none specified	Director	not listed	5/20/2002 5/20/2003
Mr. Steve McCullough Townsend Qualifications (if required): none specified	Director	not listed	5/20/2002 5/20/2005
Mr. Sid Schutter Manhattan Qualifications (if required): none specified	Director	not listed	5/20/2002 5/20/2005
Rep. Donald Steinbeisser Sidney Qualifications (if required): none specified	Director	not listed	5/20/2002 5/20/2004
Mr. John Venhuizen Manhattan Qualifications (if required): none specified	Director	not listed	5/20/2002 5/20/2004
State Emergency Response Commission (Military Affairs)			
Mr. Jim Johnson Missoula Qualifications (if required): representative of a railroad company	Governor	Erickson	5/20/2002 10/1/2003

BOARD AND COUNCIL APPOINTEES FROM MAY 2002

Appointee	Appointed by	Succeeds	Appointment/End Date
State Workforce Investment Board (Labor and Industry)			
Mr. Dave Gibson	Governor	Hindoien	5/6/2002
Helena			0/0/0
Qualifications (if required): representative of the Governor's Office			
Ms. Wendy Keating	Governor	Foster	5/6/2002
Helena			0/0/0
Qualifications (if required): representative of the Department of Labor and Industry			
Mr. Joe Mathews	Governor	not listed	5/6/2002
Helena			0/0/0
Qualifications (if required): representative of people with disabilities			

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2002 through SEPTEMBER 30, 2002

Board/current position holder	Appointed by	Term end
Aging Advisory Council (Public Health and Human Services)		
Ms. Mary Alice Rehbein, Lambert	Governor	7/18/2002
Qualifications (if required): public member		
Ms. Pauline Nikolaisen, Kalispell	Governor	7/18/2002
Qualifications (if required): public member		
Ms. Dorothea C. Neath, Helena	Governor	7/18/2002
Qualifications (if required): public member		
Mr. Wilbur Swenson, Havre	Governor	7/18/2002
Qualifications (if required): public member		
Agriculture Development Council (Agriculture)		
Mr. Everett Snortland, Conrad	Governor	7/1/2002
Qualifications (if required): actively engaged in agriculture		
Mr. Robert Hanson, White Sulphur Springs	Governor	7/1/2002
Qualifications (if required): actively engaged in agriculture		
Ms. Susan Lake, Ronan	Governor	7/1/2002
Qualifications (if required): actively engaged in agriculture		
Alternative Health Care Board (Commerce)		
Ms. Ann H. Pasha, Highwood	Governor	9/1/2002
Qualifications (if required): public member		
Ms. Kathee Dunham, Arlee	Governor	9/1/2002
Qualifications (if required): direct midwife		
Board of Barbers (Commerce)		
Ms. Delores Lund, Reserve	Governor	7/1/2002
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2002 through SEPTEMBER 30, 2002

Board/current position holder	Appointed by	Term end
Board of Barbers (Commerce) cont.		
Mr. Edward Dutton, Kalispell	**Governor**	**7/1/2002**
Qualifications (if required): licensed barber		
Board of Funeral Services (Commerce)		
Ms. Jean Ruppert, Butte	**Governor**	**7/1/2002**
Qualifications (if required): public member		
Mr. Niles Nelson, Libby	**Governor**	**7/1/2002**
Qualifications (if required): licensed mortician		
Mr. Jered Scherer, Billings	**Governor**	**7/1/2002**
Qualifications (if required): representative of a cemetery company		
Board of Hearing Aid Dispensers (Commerce)		
Mr. John Delano, Helena	**Governor**	**7/1/2002**
Qualifications (if required): public member who uses a hearing aid		
Ms. Stacia Moore, Kalispell	**Governor**	**7/1/2002**
Qualifications (if required): national certified hearing aid dispenser with a masters degree		
Board of Landscape Architects (Commerce)		
Mr. Robert Broughton, Hamilton	**Governor**	**7/1/2002**
Qualifications (if required): licensed landscape architect		
Board of Medical Examiners (Commerce)		
Mr. David B. Huebner, Great Falls	**Governor**	**9/1/2002**
Qualifications (if required): licensed podiatrist		
Dr. Donald Grewell, Billings	**Governor**	**9/1/2002**
Qualifications (if required): doctor of osteopathy		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2002 through SEPTEMBER 30, 2002

Board/current position holder	Appointed by	Term end
Board of Medical Examiners (Commerce) cont.		
Dr. Anne M. Williams, Glasgow	Governor	9/1/2002
Qualifications (if required): doctor of medicine		
Board of Nursing (Commerce)		
Reverend Steve Rice, Miles City	Governor	7/1/2002
Qualifications (if required): public member		
Ms. Rita Harding, Billings	Governor	7/1/2002
Qualifications (if required): registered professional nurse		
Ms. Jeanine Thomas, Ronan	Governor	7/1/2002
Qualifications (if required): licensed practical nurse		
Ms. Lorena Erickson, Corvallis	Governor	7/1/2002
Qualifications (if required): public member		
Board of Pharmacy (Commerce)		
Ms. Sherry Lersbak, Troy	Governor	7/1/2002
Qualifications (if required): public member		
Board of Physical Therapy Examiners (Commerce)		
Mr. Jeff Swift, Great Falls	Governor	7/1/2002
Qualifications (if required): licensed physical therapist		
Board of Private Security Patrol Officers and Investigators (Commerce)		
Ms. Francine Britton, Billings	Governor	8/1/2002
Qualifications (if required): representative of the Peace Officers Standards and Training Advisory Council		
Mr. Donald R. Houghton, Bozeman	Governor	8/1/2002
Qualifications (if required): representative of the Peace Officers Standards and Training Advisory Council		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2002 through SEPTEMBER 30, 2002

Board/current position holder	Appointed by	Term end
Board of Private Security Patrol Officers and Investigators (Labor and Industry)		
Dr. Raymond C. Murray, Missoula	Governor	8/1/2002
Qualifications (if required): representing the Peace Officers Standards and Training Advisory Council		
Board of Professional Engineers and Land Surveyors (Commerce)		
Ms. Janet Markle, Glasgow	Governor	7/1/2002
Qualifications (if required): public member		
Mr. Richard Ainsworth, Missoula	Governor	7/1/2002
Qualifications (if required): professional land surveyor		
Mr. Steve Wright, Columbia Falls	Governor	7/1/2002
Qualifications (if required): professional engineer		
Board of Psychologists (Commerce)		
Mr. Mike Mullowney, Absarokee	Governor	9/1/2002
Qualifications (if required): public member		
Board of Public Accountants (Commerce)		
Ms. Irma Paul, Helena	Governor	7/1/2002
Qualifications (if required): public member		
Board of Radiologic Technologists (Commerce)		
Ms. Debbie Sanford, Lewistown	Governor	7/1/2002
Qualifications (if required): permit holder		
Ms. Cynthia L. Smith-Finch, Billings	Governor	7/1/2002
Qualifications (if required): radiologic technologist		
Mr. Alan Sevier, Glendive	Governor	7/1/2002
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2002 through SEPTEMBER 30, 2002

Board/current position holder	Appointed by	Term end
Board of Radiologic Technologists (Commerce) cont.		
Dr. Dennis Palmer, Helena	Governor	7/1/2002
Qualifications (if required): radiologist		
Board of Research and Commercialization Technology (Commerce)		
Mr. Leonard J. Smith, Jr., Poplar	Governor	7/1/2002
Qualifications (if required): Native American		
Board of Sanitarians (Commerce)		
Mr. John Shea, Missoula	Governor	7/1/2002
Qualifications (if required): public member		
Board of Veterans' Affairs (Military Affairs)		
Mr. George G. Hageman, Jordan	Governor	8/1/2002
Qualifications (if required): veteran		
Burial Preservation Board (Governor)		
Mr. Mickey Nelson, Helena	Governor	8/22/2002
Qualifications (if required): representative of the Montana Coroner's Association		
Mr. Duncan Standing Rock, Sr., Box Elder	Governor	8/22/2002
Qualifications (if required): representative of the Chippewa-Cree Tribe		
Mrs. Germaine White, St. Ignatius	Governor	8/22/2002
Qualifications (if required): representative of the Little Shell Tribe		
Mr. George Reed, Sr., Crow Agency	Governor	8/22/2002
Qualifications (if required): representative of the Crow Tribe		
Ms. Sherri Deaver, Billings	Governor	8/22/2002
Qualifications (if required): representative of the Archeological Society		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2002 through SEPTEMBER 30, 2002

Board/current position holder	Appointed by	Term end
Burial Preservation Board (Governor) cont.		
Mr. Ben Speak Thunder, Harlem	Governor	8/22/2002
Qualifications (if required): representative of the Fort Belknap Tribe		
Commission on Community Service (Governor)		
Ms. Wanda Raining Bird, Harlem	Governor	7/1/2002
Qualifications (if required): representing tribal government		
Community Services Advisory Council (Governor)		
Ms. Sherry Stevens Wulf, Kalispell	Governor	7/1/2002
Qualifications (if required): representative of non-profit organizations		
Mr. Bob Maffit, Helena	Governor	7/1/2002
Qualifications (if required): representative of the disabled community		
Ms. Bea Ann Malichar, Billings	Governor	7/1/2002
Qualifications (if required): representative of aging human services		
Mr. Jeffrey Shapiro, Great Falls	Governor	7/1/2002
Qualifications (if required): representative of the private sector		
Mr. John Allen, Helena	Governor	7/1/2002
Qualifications (if required): representative of the Corporation for National Service		
Ms. Nan LeFebvre, Helena	Governor	7/1/2002
Qualifications (if required): representative of the director of Department of Public Health and Human Services		
Electrical Board (Commerce)		
Ms. Louise Glimm, Conrad	Governor	7/1/2002
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2002 through SEPTEMBER 30, 2002

Board/current position holder	Appointed by	Term end
Family Education Savings Program Oversight Committee (Education)		
Mr. Gerry Meyer, Great Falls	Governor	7/1/2002
Qualifications (if required): public member		
Family Support Services Advisory Council (Public Health and Human Services)		
Mr. Brian Lenhardt, Havre	Governor	9/27/2002
Qualifications (if required): parent representative from Region II		
Ms. Rene Lenhardt, Havre	Governor	9/27/2002
Qualifications (if required): parent representative from Region II		
Mr. Mike Cooney, Helena	Governor	9/27/2002
Qualifications (if required): representing Healthy Mothers/Healthy Babies		
Ms. Sylvia Danforth, Miles City	Governor	9/27/2002
Qualifications (if required): representative of provider/Part C Agency		
Mr. Ted Maloney, Missoula	Governor	9/27/2002
Qualifications (if required): representative at large		
Mr. Dan McCarthy, Helena	Governor	9/27/2002
Qualifications (if required): agency representative/preschool specialist/SEA		
Ms. Sandi Marisdotter, Helena	Governor	9/27/2002
Qualifications (if required): representing provider/Part C Agency		
Ms. Sue Forest, Missoula	Governor	9/27/2002
Qualifications (if required): representative of personnel preparation		
Ms. Cris Volinkaty, Missoula	Governor	9/27/2002
Qualifications (if required): representing provider/Part C Agency		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2002 through SEPTEMBER 30, 2002

Board/current position holder	Appointed by	Term end
Family Support Services Advisory Council (Public Health and Human Services) cont.		
Ms. Barbara Stefanic, Laurel	Governor	9/27/2002
Qualifications (if required): LEA representative for special education co-operatives		
Mr. John Holbrook, Helena	Governor	9/27/2002
Qualifications (if required): agency representative/State Insurance Commissioner		
Ms. Jackie Jandt, Helena	Governor	9/27/2002
Qualifications (if required): agency representative/mental health		
Ms. Sharon Wagner, Helena	Governor	9/27/2002
Qualifications (if required): representative/Special Health Services		
Ms. Millie Kindle, Malta	Governor	9/27/2002
Qualifications (if required): representative of Parent Region I		
Sen. Gerald Pease, Lodge Grass	Governor	9/27/2002
Qualifications (if required): legislator and representative of Parent Region II		
Ms. Lynda Korth, Helena	Governor	9/27/2002
Qualifications (if required): representative/Child and Family Services		
Rep. Mary Anne Guggenheim, Helena	Governor	9/27/2002
Qualifications (if required): representative of medical/health care services		
Ms. Patti Russ, Helena	Governor	9/27/2002
Qualifications (if required): agency representative/child care		
Ms. Liz Harter, Helena	Governor	9/27/2002
Qualifications (if required): agency representative/State Insurance Commissioner		
Ms. Kelly Johnson, Kalispell	Governor	9/27/2002
Qualifications (if required): representative of parents at large		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2002 through SEPTEMBER 30, 2002

Board/current position holder	Appointed by	Term end
Family Support Services Advisory Council (Public Health and Human Services) cont.		
Ms. Ann Marie Johnson, Missoula	Governor	9/27/2002
Qualifications (if required): representative of Head Start		
Ms. Lucy Hart-Paulson, Missoula	Governor	9/27/2002
Qualifications (if required): therapist representative		
Ms. Sandy McGennis, Great Falls	Governor	9/27/2002
Qualifications (if required): representative of providers		
Ms. Denise King, Helena	Governor	9/27/2002
Qualifications (if required): agency representative/EPSDT		
Ms. Gwen Beyer, Missoula	Governor	9/27/2002
Qualifications (if required): representative of Parent Region V		
Ms. Phyllis Astheimer, Bozeman	Governor	9/27/2002
Qualifications (if required): family support specialist		
Ms. Shelley Korth, Helena	Governor	9/27/2002
Qualifications (if required): parent representative from Region IV		
Mr. Jay Korth, Helena	Governor	9/27/2002
Qualifications (if required): parent representative from Region IV		
Ms. Novelene Martin, Miles City	Governor	9/27/2002
Qualifications (if required): DDP Field Services Specialist representative		
Independent Living Council (Public Health and Human Services)		
Mr. Robert D. Liston, Missoula	Director	8/7/2002
Qualifications (if required): representing advocates and consumers		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2002 through SEPTEMBER 30, 2002

Board/current position holder	Appointed by	Term end
Independent Living Council (Public Health and Human Services) cont.		
Ms. Carol LaRocque, Great Falls	Director	8/7/2002
Qualifications (if required): representative from state agencies who provide service to the disabled		
Mental Disabilities Board of Visitors (Governor)		
Ms. Joan-Nell Macfadden, Great Falls	Governor	7/1/2002
Qualifications (if required): experience dealing with treatment and welfare of children with emotional disturbance		
Mr. Graydon Davies Moll, Polson	Governor	7/1/2002
Qualifications (if required): having experience with developmentally disabled adults		
Mr. Steve Cahill, Clancy	Governor	7/1/2002
Qualifications (if required): experience with the treatment and welfare of adults with mental illnesses		
Montana Historical Society Board of Trustees (Historical Society)		
Mr. Steve Browning, Helena	Governor	7/1/2002
Qualifications (if required): public member		
Ms. Mary Murphy, Bozeman	Governor	7/1/2002
Qualifications (if required): historian		
Montana Mint Committee (Agriculture)		
Mr. John Ficken, Kalispell	Governor	7/1/2002
Qualifications (if required): mint grower		
Mr. Clyde Fisher, Columbia Falls	Governor	7/2/2002
Qualifications (if required): representative of the mint industry council		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2002 through SEPTEMBER 30, 2002

Board/current position holder	Appointed by	Term end
Montana Wheat and Barley Committee (Agriculture)		
Mr. Leonard Schock, Vida	Governor	8/20/2002
Qualifications (if required): representative of District VII and a Republican		
Mr. Daniel Kidd, Big Sandy	Governor	8/20/2002
Qualifications (if required): representative of District IV and a Republican		
State Banking Board (Commerce)		
Mr. Max Agather, Kalispell	Governor	7/1/2002
Qualifications (if required): public member		
Mr. Wayne Edwards, Denton	Governor	7/1/2002
Qualifications (if required): state bank officer in a smaller bank		
Teachers' Retirement Board (Administration)		
Ms. Emily Hall Bogut, Kalispell	Governor	7/1/2002
Qualifications (if required): teacher and a member of the retirement system		
Telecommunications Access Services/Persons with Disabilities (Public Health and Human Services)		
Mr. Thomas P. McGree, Helena	Governor	7/1/2002
Qualifications (if required): representative of interLATA interexchange carrier		
Mr. Edward Van Tighem, Great Falls	Governor	7/1/2002
Qualifications (if required): deaf		
Ms. Flo Ellen Hippe, Great Falls	Governor	7/1/2002
Qualifications (if required): person with a disability		
Mr. Jack Sterling, Billings	Governor	7/1/2002
Qualifications (if required): representative of an independent local exchange company		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2002 through SEPTEMBER 30, 2002

Board/current position holder	Appointed by	Term end
Tourism Advisory Council (Commerce)		
Mr. Carl Kochman, Great Falls	Governor	7/1/2002
Qualifications (if required): representing Russell Country		
Mr. Kelly Flynn, Townsend	Governor	7/1/2002
Qualifications (if required): representing Gold West Country and outfitters		
Mr. Bob Dompier, Great Falls	Governor	7/1/2002
Qualifications (if required): representing Russell Country		
Ms. Lynda Bourque, Billings	Governor	7/1/2002
Qualifications (if required): representing Custer Country		
Ms. A. Ramona Holt, Lolo	Governor	7/1/2002
Qualifications (if required): representing Glacier Country		
Ms. Michele Reese, Whitefish	Governor	7/1/2002
Qualifications (if required): representing Glacier Country		
Mr. Rick McCamley, Whitefish	Governor	7/1/2002
Qualifications (if required): representing the Montana Innkeepers		
Vocational Rehabilitation Center (Public Health and Human Services)		
Ms. Bonnie Rollins, Glendive	Director	8/7/2002
Qualifications (if required): none specified		
Mr. Jim Daily, Butte	Director	8/7/2002
Qualifications (if required): none specifed		